To: adm15.arwheeler.email[adm15.arwheeler.email@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Humphreys, Hayly[humphreys.hayly@epa.gov]; Molina, Michael[molina.michael@epa.gov]
From: Leopold, Matt (OGC)[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5CDF09A3924DADA6D322C6794CC4FA-LEOPOLD, MA]
Sent: Wed 7/24/2019 11:16:14 AM (UTC)
Subject: Draft Talkers FOIA.docx
Draft Talkers FOIA.docx
ATT00001.txt

Administrator, attached are the talking points re the FOIA rule.

Let us know if you need anything more.

Matt

EPA UPDATED FOIA REGULATIONS

BACKGROUND:

- Late last month, EPA finalized updated FOIA regulations that bring the Agency into compliance with a series of Congressional amendments. EPA's updated FOIA regulations will be effective on July 26, 2019.
- EPA has not substantively updated its FOIA regulations since 2002. Since that time, Congress has enacted three separate amendments to FOIA. In 2007, Congress passed amendments that addressed procedural concerns in FOIA administration. In 2009, Congress amended the requirements of FOIA Exemption 3. In 2016, Congress passed the FOIA Improvement Act, a comprehensive procedural and substantive FOIA reform that explicitly required agencies to update their FOIA regulations. Despite this statutory requirement, the previous Administration failed to update the Agency's FOIA regulations.
- The updated regulations were developed by career EPA employees and adopted and approved without any significant changes from political appointees.
- The updates in no way expand or increases the authority of political officials in the FOIA process.
- EPA's updated regulation now expressly lists the Administrator, who always had full FOIA decision-making authority under the statute, itself. EPA's updated regulation also expressly lists the Deputies in Program and Regional Offices. These officials always had FOIA decision-making authority under the regulations as "designees."
- The regulations centralize the intake and initial review process to the National FOIA Office.

Letter from Senators on the Judiciary Committee

- On Monday, the Agency received a letter from four senators who serve on the Judiciary Committee: Grassley, Ranking Member Feinstein, Cornyn, and Leahy.
- In the letter, the senators argue that the updated rules "make numerous changes to EPA's FOIA process that appear to run contrary to the letter and spirit of FOIA, thus undermining the American people's right to access information from the EPA."
- They also reiterate criticism of the regulations, first raised by media reports, arguing the changes would expressly give the Administrator and other political appointees the final say over what information is withheld and released.
- The letter urged the Agency to reconsider implementation of the updated rules and to provide an opportunity for public comment.

KEY POINTS:

- **Centralization:**
  - All FOIA requests submitted after July 26, 2019 will be directed to EPA Headquarters by US Mail or FOIAonline.
  - Regional and program offices will still conduct search, collection, review, and record releases once the Nationals FOIA Office has assigned a request to a region or program office. EPA Regions are still empowered to grant FOIA requests.
  - EPA is only centralizing the submission and receipt of all requests. The decision-making authority for FOIA responses remains with the offices that are document custodians.
  - Centralizing FOIA intake was one of the key process improvement ideas that emerged from a Lean Management Kaizen event in early 2018.
  - In 2018, the FOIA Federal Advisory Committee, convened by the National Archives, recommended that federal departments and agencies "centralize FOIA processing where appropriate."
- **One Month Glidepath:**
  - EPA voluntarily instituted a glidepath towards implementing centralized intake by instructing Regions who receive improperly submitted mailed or emailed requests directly from requesters to continue

accepting those requests until August 23, 2019. For requests improperly submitted after August 23, 2019, the Agency has also instructed Regions to inform requesters of the proper methods for submitting FOIA request under the update FOIA regulation.

- **Summary of Major Changes:**
  1. Centralization: All requests will be received by EPA Headquarters via US Mail or FOIAonline.
  2. Procedural Changes:
     - reflecting the statutory language for the tolling of the time period for responding to requests; making the Agency's FOIA Public Liaison available; updating standard requirements for response letters; extending the minimum time to file an administrative appeal; clarifying the positions that have authority to respond to FOIA requests; clarifying positions that have authority to respond to administrative appeals; clarifying that requests, appeals, and other communications from requesters, must be submitted before 5:00 p.m. Eastern Time for the Agency to consider the communication as received on that business day; and replacing references to "Agency FOI Office" with references to the National FOIA Office.
  3. Nondiscretionary Changes: This rule revises or strikes provisions in the EPA' s prior regulations that are repetitive of the FOIA, corrects certain provisions in the EPA's prior regulations to conform to the amended statutory text, and makes minor and purely ministerial changes.
     - replacing the outdated definition of "news media" with a cross-reference to the FOIA; striking the obsolete list of FOIA exemptions as incorrect and duplicative of the FOIA; making the Agency's FOIA Public Liaison available; incorporating the text of the 2016 Amendments, which changed when an agency may charge search fees; and incorporating the statutorily required information that the agency must include in FOIA determinations; replacing references to "Agency FOI Office" with references to the National FOIA Office; and making certain non-substantive style and grammatical corrections to the regulations.

TALKING POINTS:

EPA did not expand political officials' oversight of FOIA responses:

- EPA's updated FOIA regulation did not change the political officials with FOIA decision-making authority or expand their authority. The revisions do not change the substantive standards the Agency applies in implementing the FOIA.
- EPA's updated regulation did not and cannot change the statute Congress passed, nor did it expand EPA's regulatory authority to determine responsive records.
- This regulatory amendment does not replace or diminish Ryan Jackson's November 16, 2018 Memorandum on Awareness Notification.

EPA's decision to streamline submission of FOIA requests to its National FOIA Office will allow EPA to ensure consistent and coordinated communication with the public, regions, and program offices:

- EPA has left the FOIA response decision-making authority with the offices that are the document custodians. The updated regulation continues to provide regional administrators, their deputies, and delegates the authority to issue final determinations.
- Centralized FOIA intake and initial review will allow EPA to minimize coordination required for initial assignment of FOIA requests and to ensure consistency in early outreach to requesters.

EPA's decision to publish a final rule does not violate Administrative law:

- EPA's decision to increase efficiency by providing a single location for the public to submit FOIA requests is a procedural rule that does not require notice and comment under the Administrative Procedure Act.
- EPA had no discretion for the changes mandated by the amendments to FOIA in 2007, 2009, and 2016.
- Many other agencies similarly published final rules to implement these amendments without notice and comment.

FOIA/NATIONAL FOIA OFFICE FACT SHEET

BACKGROUND:

- In FY 2019, the Agency will continue to work to more centrally manage FOIA requests to achieve efficiencies in processing. On April 15, 2018, the National FOIA Office (NFO) was created in EPA's Office of General Counsel (OGC) by reorganizing the former Office of Environmental Information (OEI) National FOIA Program into OGC and combining it with OGC's FOIA Expert Assistance Team.
- In FY 2017, EPA received 11,518 requests – the most received by EPA since FY 2008
    - This is an increase of 9.7% over 2016 (when we received 10,403 requests).
- In FY 2018, EPA received 11,364 requests
    - This is 9.23% more than 2016.
- The Agency currently has over 65 pending FOIA court cases. This is more than triple the average number of cases received between 2013-2015, which was the Agency's previous highwater-mark for FOIA litigation.
- The Agency stopped tracking the backlog from the prior Administration at the end of August 2018.
    - At that time we had reduced the backlog by 74.1% (from 652 requests to 169).
- The Office of Mission Support (OMS) eDiscovery Services is a critical, centralized service, provided to all EPA offices for searching, collecting and processing electronic information that may be responsive to FOIA requests, litigation needs, and Congressional inquiries.

KEY POINTS:

- The OGC NFO assigns all Headquarters' FOIA requests and makes Agency-wide decisions regarding FOIA expedited processing and fee waivers, and is updating and improving policies, procedures, regulations, guidance and training.
- OGC also provides legal counsel and support for EPA's FOIA responsibilities. OGC will continue to prioritize the timely and complete processing of FOIAs and FOIA administrative appeals to comply with all applicable laws and regulations.
- We have also implemented a series of critical reforms to the FOIA process at the Agency which include:
    - Reorganized the FOIA functions to increase centralization and increase accountability;
    - Upgraded eDiscovery suite of services and deployed tools to improve the efficiencies of FOIA electronic document review,
    - Hired and deployed more staff for processing FOIA responses and established a Tiger Team of 14 staff to handle document review within the Administrator's Office;
    - Streamlined the FOIA process by using the FOIA Expert Assistance Team (FEAT); and
    - Improved accountability by including FOIA compliance as an element in supervisor performance plans.

TALKING POINTS:

- We are working to ensure that we have the necessary resources to continue to improve our FOIA responses in the Administrator's office and across the agency.
- The volume of FOIA requests and FOIA litigation Agency-wide at EPA has increased under this Administration (FY 2017 and FY 2018). The Administrator's Office **has seen nearly a 400% increase**.
- Nonetheless, we were able to make strides on the agency-wide FOIA backlog we inherited from the previous Administration, completing nearly 500 requests and reducing that backlog by nearly 75%.
- Every minute the Agency spends working on these voluminous FOIA requests is one minute less we have to focus on our core mission of human health protection and the environment.
- The Agency has over one hundred full time staff working on FOIA.

FOIA/NATIONAL FOIA OFFICE FACT SHEET

Background:

In FY 2019, the Agency will continue to work to more centrally manage FOIA requests to achieve efficiencies in processing. On April 15, 2018, the National FOIA Office (NFO) was created in EPA's Office of General Counsel (OGC) by reorganizing the former Office of Environmental Information (OEI) National FOIA Program into OGC and combining it with OGC's FOIA Expert Assistance Team.

- In FY 2017, EPA received 11,518 requests – the most received by EPA since FY 2008
    - This is an increase of 9.7% over 2016 (when we received 10,403 requests).
- In FY 2018, EPA received at least 11,323 requests (shutdown began before the final tally was completed).
    - This is 8.12% more than 2016.
- The Agency currently has over 65 pending FOIA court cases. This is more than triple the number of cases received between 2013-2015, which was the Agency's previous highwater-mark for FOIA litigation.
- The Agency stopped tracking the backlog from the prior Administration at the end of August 2018.
    - At that time we had reduced the backlog by 74.1% (from 652 requests to 169).

The Office of Mission Support (OMS) eDiscovery Services is a critical, centralized service, provided to all EPA offices for searching, collecting and processing electronic information that may be responsive to FOIA requests, litigation needs, and Congressional inquiries.

Key Points:

- The OGC NFO assigns all Headquarters' FOIA requests and makes Agency-wide decisions regarding FOIA expedited processing and fee waivers, and is updating and improving policies, procedures, regulations, guidance and training.
- OGC also provides legal counsel and support for EPA's FOIA responsibilities. OGC will continue to prioritize the timely and complete processing of FOIAs and FOIA administrative appeals to ensure compliance with all applicable laws and regulations.
- We have also implemented a series of critical reforms to the FOIA process at the Agency which include:
    - Reorganized the FOIA functions to increase centralization and increase accountability,
    - Upgraded eDiscovery suite of services and deployed tools to improve the efficiencies of FOIA electronic document review,
    - Hired and deployed more staff for processing FOIA responses and established a Tiger Team of 14 staff to handle document review within the Administrator's OfficeStreamlined the FOIA process by using the FOIA Expert Assistance Team (FEAT),
    - Improved accountability by including FOIA compliance as an element in supervisor performance plans.

Talking Points:

- We are working to ensure that we have the necessary resources to continue to improve our FOIA responses in the Administrator's office and across the agency.
- The volume of FOIA requests and FOIA litigation Agency-wide at EPA under this Administration (FY 2017 and FY 2018). The Administrator's Office **has seen nearly a 400% increase**.
- Nonetheless, we were able to make strides on the agency-wide FOIA backlog we inherited from the previous Administration, completing 500 requests and reducing that backlog by more than 75%.
- Every minute the Agency spends working on these voluminous FOIA requests is one minute less we have to focus on our core mission of human health protection and the environment.
- The Agency has over one hundred FTE working on FOIA.

Message

From: Grantham, Nancy [Grantham.Nancy@epa.gov]
Sent: 6/27/2019 12:04:36 PM
Subject: june 27 issues
Attachments: june27.docx

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
202-564-6879 (desk)
202-253-7056 (cell)
grantham.nancy@epa.gov

Message

From: Grantham, Nancy [Grantham.Nancy@epa.gov]
Sent: 6/26/2019 11:31:12 AM
Subject: june 26 issues
Attachments: june26.docx

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
202-564-6879 (desk)
202-253-7056 (cell)
grantham.nancy@epa.gov

Message

From: Grantham, Nancy [Grantham.Nancy@epa.gov]
Sent: 6/25/2019 11:26:27 AM
Subject: June 25 issues
Attachments: june25.docx

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
202-564-6879 (desk)
202-253-7056 (cell)
grantham.nancy@epa.gov

Message

From: Grantham, Nancy [Grantham.Nancy@epa.gov]
Sent: 6/24/2019 12:10:08 PM
Subject: june 24 issues
Attachments: june24.docx

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
202-564-6879 (desk)
202-253-7056 (cell)
grantham.nancy@epa.gov

Message

From: Grantham, Nancy [Grantham.Nancy@epa.gov]
Sent: 6/21/2019 12:31:38 PM
Subject: june 21 issues
Attachments: june21.docx

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
202-564-6879 (desk)
202-253-7056 (cell)
grantham.nancy@epa.gov

Message

From: Grantham, Nancy [Grantham.Nancy@epa.gov]
Sent: 6/20/2019 12:45:20 PM
Subject: june 20 issues
Attachments: june20.docx

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
202-564-6879 (desk)
202-253-7056 (cell)
grantham.nancy@epa.gov

Message

From: Grantham, Nancy [Grantham.Nancy@epa.gov]
Sent: 6/19/2019 11:45:30 AM
Subject: June 19 issues
Attachments: June19.docx

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
202-564-6879 (desk)
202-253-7056 (cell)
grantham.nancy@epa.gov

Message

From: Grantham, Nancy [Grantham.Nancy@epa.gov]
Sent: 6/18/2019 11:48:31 AM
Subject: june 18 issues
Attachments: june18.docx

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
202-564-6879 (desk)
202-253-7056 (cell)
grantham.nancy@epa.gov

Message

From: Grantham, Nancy [Grantham.Nancy@epa.gov]
Sent: 6/17/2019 11:44:02 AM
Subject: June 17 issues
Attachments: june17.docx

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
202-564-6879 (desk)
202-253-7056 (cell)
grantham.nancy@epa.gov

Message

From: Grantham, Nancy [Grantham.Nancy@epa.gov]
Sent: 6/14/2019 11:12:15 AM
Subject: June 14 issues
Attachments: June14.docx

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
202-564-6879 (desk)
202-253-7056 (cell)
grantham.nancy@epa.gov

Message

From: Grantham, Nancy [Grantham.Nancy@epa.gov]
Sent: 6/12/2019 12:07:47 PM
Subject: June 12 issues
Attachments: june12.docx

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
202-564-6879 (desk)
202-253-7056 (cell)
grantham.nancy@epa.gov

Message

From: Darwin, Henry [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7AE8E9D24EEB4132B25982E358EFBD9D-DARWIN, HEN]
Sent: 11/13/2018 2:14:35 PM
To: Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; White, Elizabeth [white.elizabeth@epa.gov]
Subject: RE:

It's my understanding that this new language is intended for SES PARS only.

Henry

From: Brazauskas, Joseph
Sent: Tuesday, November 13, 2018 9:12 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Darwin, Henry <darwin.henry@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>
Subject: RE:

Wendy keeps asking me if this language will be SES only or will also be for the non-SES PARS? She claims that a large percentage of the non-SES PARS agreements for FY 19 have already been signed that do not contain the new language.

Regardless of that, I want to be certain that we are carrying out the directive from the Administrator to change the language and if that includes changing the language for non-SES as well as SES then we will need to discuss how to implement for non-SES. Please let me know how to proceed and implement.

Thanks,
Joe

Joseph A. Brazauskas
Associate Deputy General Counsel
U.S. Environmental Protection Agency
(202) 564-5189

From: Brazauskas, Joseph
Sent: Friday, November 9, 2018 6:56 PM
To: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Darwin, Henry <darwin.henry@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>
Subject: Re:

Here is the language that we landed on addressing the Administrator's request. Please let me know if there are any questions.

Promotes Agency's compliance with Freedom of Information Act (FOIA) laws, regulations, policies, and Executive Orders. When a FOIA request is submitted, oversees prompt processing of the request, including a two-level review of the documents, ensures issuance of timely and well-reasoned initial determination responding to the request, ensures proper application of the FOIA exemptions and other legal requirements prior

to releasing information, and actively assists with related appeals and litigation. Is accountable for ensuring that employees responding to FOIA requests have the knowledge, skills and abilities to perform their duties and respond in a thorough and timely manner to requests to ensure both: 1) protection of confidential and privileged information; and 2) the Agency's compliance with all applicable laws, regulations, policies, and Executive Orders. Supervisors will determine which portions apply to any job.

Sent from my iPhone

On Nov 9, 2018, at 5:39 PM, Leopold, Matt (OGC) <Leopold.Matt@epa.gov> wrote:

> We've worked out the updated language for the pars. Coping Joe to circulate. We will have Elise address.
>
> Sent from my iPhone
>
> On Nov 9, 2018, at 3:34 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:
>
>> With the new FOIA memo going out Tuesday and the upcoming EMC, it seems like a good opportunity to raise the new PARS requirements for FOIA (and the new PARS requirements, of course, for ELMS too).
>>
>> Apparently Elise is presenting at the EMC on FOIA and I just wanted to encourage the program to include this discussion.
>>
>> Ryan Jackson
>> Chief of Staff
>> U.S. Environmental Protection Agency
>> (202) 564-6999

Message

From: Willey, Katharine [willey.katharine@epa.gov]
Sent: 8/6/2019 4:29:52 PM
To: Epp, Timothy [Epp.Timothy@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; Abboud, Michael [abboud.michael@epa.gov]; White, Elizabeth [white.elizabeth@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Tran, Victoria [tran.victoria@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]
CC: Woods, Andrea [Woods.Andrea@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Schiermeyer, Corry [schiermeyer.corry@epa.gov]
Subject: RE: Question about Interior FOIA

Adding Matt.

From: Epp, Timothy <Epp.Timothy@epa.gov>
Sent: Tuesday, August 6, 2019 12:26 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Willey, Katharine <willey.katharine@epa.gov>; Tran, Victoria <tran.victoria@epa.gov>
Cc: Woods, Andrea <Woods.Andrea@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Subject: RE: Question about Interior FOIA

Ex. 5 AC/DP

Tim

Timothy R. Epp
|National FOIA Office
U.S. Environmental Protection Agency | Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC 2310A)
Washington, D.C. 20460 | WJCN 7309B
Phone (202) 564-2830| epp.timothy@epa.gov

National FOIA Office
EPA Office of General Counsel

From: Jackson, Ryan
Sent: Tuesday, August 06, 2019 11:47 AM
To: Abboud, Michael <abboud.michael@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Willey, Katharine <willey.katharine@epa.gov>; Tran, Victoria <tran.victoria@epa.gov>
Cc: Woods, Andrea <Woods.Andrea@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Subject: RE: Question about Interior FOIA

I don't think it requires more than this.

From: Abboud, Michael <abboud.michael@epa.gov>
Sent: Tuesday, August 6, 2019 11:30 AM
To: Epp, Timothy <Epp.Timothy@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Willey, Katharine <willey.katharine@epa.gov>; Tran, Victoria <tran.victoria@epa.gov>
Cc: Woods, Andrea <Woods.Andrea@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Subject: FW: Question about Interior FOIA

I'm not sure who else needs to be included, but wanted to flag for everyone. Interior provided the Hill the statement below.

INTERIOR: "The U.S. Department of the Interior continually strives to increase the value of the services we provide to the American people. As part of the Department's efforts to improve its FOIA program, we consulted other federal agencies to better understand their practices including training, technology, and processing. We are committed to increasing transparency and improving our ability to meet our statutory obligations with an ever-increasing volume of FOIA requests."

Suggested response from EPA:
DRAFT: Ex. 5 AC/DP

Ex. 5 AC/DP

From: Miranda Green <mgreen@thehill.com>
Sent: Tuesday, August 6, 2019 11:22 AM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: Question about Interior FOIA

Hi Michael,
I'm writing a story based off internal emails from 2018 that show Interior requested meetings with EPA officials to talk about EPA's FOIA policy, and I wanted to see if you want to comment.

1) What was the nature of the meetings and communications between the Interior solicitor's office and Timothy Epp to discuss EPA's centralized FOIA office programs?
2) Is it unusual for Interior and EPA to communicate over each other's FIOA processes?
3) Do you think criticism, that changes to your new FOIA policy has made it slow, is fair?
4) Did EPA communicated directly with David Bernhardt during any of these meetings over the agencys' respective FOIA policies?

We plan to push the story out in an hour or so.

Thanks,
Miranda

--
Miranda Green
Energy and Environment Reporter, The Hill
202-999-0660
mgreen@thehill.com
@mirandacgreen

Message

From: Abboud, Michael [abboud.michael@epa.gov]
Sent: 6/27/2019 7:26:36 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Willey, Katharine [willey.katharine@epa.gov]; Konkus, John [konkus.john@epa.gov]; Schiermeyer, Corry [schiermeyer.corry@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]
Subject: FW: EPA's Response to Society of Environmental Journalists Letter - Preview

Ok this is updated and ready to go. Who is going to send the letter to Meaghan Parker? I'll press send on the press release right after that, and Nancy can we get the letter posted on the FOIA reading room.

From: EPA Press Office <press@epa.gov>
Sent: Thursday, June 27, 2019 3:24 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: EPA's Response to Society of Environmental Journalists Letter - Preview

U.S. ENVIRONMENTAL PROTECTION AGENCY

NEWS RELEASE

WWW.EPA.GOV/NEWSROOM

EPA's Response to Society of Environmental Journalists

This week several media outlets misrepresented EPA's new FOIA regulation, and were forced to correct their misreporting. This new regulation brings the Agency into compliance with the Congressional amendments to FOIA from 2007, 2009, and 2016. Congress provided all federal departments and agencies until the end of 2016 to update their FOIA regulations, the Obama administration failed to meet this deadline.

Yesterday the Society of Environmental Journalists (SEJ,) whose mission states that they strive to "strengthen the quality" of environmental journalism, sent a letter to EPA Administrator Andrew Wheeler which included numerous inaccuracies which have been regurgitated from false articles. Below is EPA's response to the SEJ, signed by EPA career officials.

BELOW IS THE LETTER IN FULL:

On behalf of the Administrator of the U.S. Environmental Protection Agency, we write in response to your letter dated, June 26, 2019. Together we manage the Agency's National Freedom of Information Act Office, which advises the Agency on legal issues pertaining to FOIA requests, coordination, and project management. Additionally, we

are the two career attorneys tasked with providing the recommendations to update the Agency's FOIA regulations.

This week EPA finalized an updated FOIA regulation that brings the Agency into compliance with a series of Congressional amendments. Unfortunately, a series of false and misleading claims have relayed inaccurate information to the public about this updated regulation. The Agency believes it is important to address these significant misrepresentations and emphasize that the update to the Agency's FOIA regulation in no way expands or increases the authority of political officials in the FOIA process. The Agency's updated regulation does not grant political officials' additional authority to review or withhold FOIA documents, their authority will remain consistent with the authority granted to them under the past regulation.

1. EPA did not expand political officials' oversight of FOIA responses.

EPA's updated FOIA regulation did not change the political officials with FOIA decisionmaking authority or expand their authority.

In fact, the FOIA decisionmakers identified in EPA's updated regulation are nearly identical to the list in EPA's old regulations at 40 CFR 2.104(h).

EPA's updated regulation now expressly lists the Administrator, who always had full FOIA decisionmaking authority under the statute, itself. The updated regulations have not increased or otherwise altered the Administrator's authority to make decisions under FOIA.

EPA's updated regulation also expressly lists the Deputies in Program and Regional Offices. These officials always had FOIA decisionmaking authority under the regulations as "designees." Deputies most frequently include the top career official in each program and regional office. Rather than expanding political officials' oversight - which this language did not do — this change expressly recognizes the role of career officials.

In fact, FOIA responses are rarely, issued by political employees -- to the contrary, such decisions typically are issued at the career director or career branch chief level. The updated regulation is not expected to impact or alter that practice.

2. EPA did not expand political officials' power.

EPA's updated regulation did not and cannot change the statute Congress passed.

FOIA determinations have always included decisions to withhold records or to issue "no records" responses. The updated regulation does not grant more power than EPA's prior regulations.

EPA's prior rules provided in section 104(g) that "[a]n adverse determination consists of . . . a determination that a requested record does not exist or cannot be located[.]" EPA's new updated regulation does not state anything more than this.

3. EPA's decision to centralize the intake process will speed FOIA processing, not slow it.

EPA's decision to streamline submission of FOIA requests to its National FOIA Office will allow EPA to ensure consistent and coordinated communication with the public, regions, and program offices.

In 2018, the FOIA Federal Advisory Committee, convened by the National Archives, recommended that federal departments and agencies "centralize FOIA processing where appropriate." Centralized FOIA submission will allow EPA to ensure consistent and coordinated communication with the public, regions, and program offices.

Many other departments and agencies have gone further than EPA in streamlining the FOIA processing, such as Department of State, USAID, Social Security Administration (in the Office of General Counsel), the Securities and Exchange Commission, and Commodity Futures Trading Commission (in the Office of General Counsel), among others. EPA has left the FOIA response decisionmaking authority with the offices that are document custodians. Department of Labor has a similar centralized FOIA submission mailbox and decentralized FOIA processing and response structure.

Centralized FOIA intake and initial review will allow EPA to minimize coordination required for initial assignment of FOIA requests and to ensure consistency in early outreach to requesters.

4. EPA's decision to publish a final rule does not violate Administrative law

EPA's decision to increase efficiency by providing a single location for the public to submit FOIA requests is a procedural rule that does not require notice and comment under the Administrative Procedure Act.

EPA also published its FOIA updated regulation as a final rule without notice and public comment because EPA had no discretion for the changes mandated by the amendments to FOIA in 2007, 2009, and 2016.

Many other agencies similarly published final rules to implement these amendments without notice and comment. Those include:

- Housing and Urban Development. 82 FR 3619 (01/12/2017)
- NEH, National Foundation on the Arts and the Humanities, 82 FR 44 (01/03/2017)
- U.S. Nuclear Regulatory Commission, 81 FR 96344 (12/30/2016)
- Department of Energy, 81 FR 94915 (12/27/2016)

- U.S. International Trade Commission, 81 FR 86575 (12/01/2016)
- Farm Credit Administration, 81 FR 63365 (09/15/2019)
- Surface Transportation Board, 81 FR 90750 (12/15/2019)
- Office of Special Counsel, 82 FR 15609 (03/30/2017)
- National Labor Relations Board, 82 FR 11748 (02/24/2017)
- National Council on Disability, 81 FR 93791 (12/22/2016)
- Tennessee Valley Authority, 82 FR 41511 (09/01/2017)
- Defense Nuclear Facilities Safety Board, 82 FR 30722 (07/03/2017)

5. EPA regions are still empowered to grant requests

Under the updated regulation regional offices have the authority to grant FOIA requests.

The updated regulation only centralizes the intake of FOIA requests to the National FOIA Office; it does not centralize the searching, reviewing, or production of records.

The updated regulation, like the 2002 regulations, continues to provide regional administrators, their deputies, and delegates the authority to issue final determinations.

Best Regards,

Elise Packard, Acting Deputy General Counsel for Operations

Timothy Epp, Acting Director, National EPA FOIA Office

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Message

From: Willey, Katharine [willey.katharine@epa.gov]
Sent: 6/27/2019 6:30:01 PM
To: Abboud, Michael [abboud.michael@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Konkus, John [konkus.john@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]; Schiermeyer, Corry [schiermeyer.corry@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]
Subject: RE: EPA's Response to Society of Environmental Journalists Letter - Preview
Attachments: 2019.6.27_EPA_SEJ.pdf

Apologies for the delay. NFO thought they spotted a last minute error. Abboud—if you could remove the metadata from the PDF I would really appreciate it. I was sadly without OCIR's access to Adobe Pro on this one. Thanks all.

Text of Letter:

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: Abboud, Michael
Sent: Thursday, June 27, 2019 2:00 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Konkus, John <konkus.john@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Willey, Katharine <willey.katharine@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>
Subject: FW: EPA's Response to Society of Environmental Journalists Letter - Preview

With updated edits.

From: EPA Press Office <press@epa.gov>
Sent: Thursday, June 27, 2019 1:59 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: EPA's Response to Society of Environmental Journalists Letter - Preview

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OFFICE OF
GENERAL COUNSEL

Meahan E. Parker
Executive Director
Society of Environmental Journalists
1629 K Street NW, Suite 300
Washington, D.C. 20006

Dear Director Parker:

On behalf of the Administrator of the U.S. Environmental Protection Agency, we write in response to your letter dated, June 26, 2019. Together we manage the Agency's National Freedom of Information Act Office, which advises the Agency on legal issues pertaining to FOIA requests, coordination, and project management. Additionally, we are the two career attorneys tasked with providing the recommendations to update the Agency's FOIA regulations.

This week EPA finalized an updated FOIA regulation that brings the Agency into compliance with a series of Congressional amendments. Unfortunately, a series of false and misleading claims have relayed inaccurate information to the public about this updated regulation. The Agency believes it is important to address these significant misrepresentations and emphasize that the update to the Agency's FOIA regulation in no way expands or increases the authority of political officials in the FOIA process. The Agency's updated regulation does not grant political officials' additional authority to review or withhold FOIA documents, their authority will remain consistent with the authority granted to them under the past regulation.

1. EPA did not expand political officials' oversight of FOIA responses.

EPA's updated FOIA regulation did not change the political officials with FOIA decisionmaking authority or expand their authority.

In fact, the FOIA decisionmakers identified in EPA's updated regulation are nearly identical to the list in EPA's old regulations at 40 CFR 2.104(h).

EPA's updated regulation now expressly lists the Administrator, who always had full FOIA decisionmaking authority under the statute, itself. The updated regulations have not increased or otherwise altered the Administrator's authority to make decisions under FOIA.

EPA's updated regulation also expressly lists the Deputies in Program and Regional Offices. These officials always had FOIA decisionmaking authority under the regulations as "designees." Deputies most frequently include the top career official in each program and regional office. Rather than expanding political officials' oversight – which this language did not do — this change expressly recognizes the role of career officials.

In fact, FOIA responses are rarely, issued by political employees -- to the contrary, such decisions typically are issued at the career director or career branch chief level. The updated regulation is not expected to impact or alter that practice.

2. EPA did not expand political officials' power.

EPA's updated regulation did not and cannot change the statute Congress passed.

FOIA determinations have always included decisions to withhold records or to issue "no records" responses. The updated regulation does not grant more power than EPA's prior regulations. EPA's prior rules provided in section 104(g) that "[a]n adverse determination consists of . . . a determination that a requested record does not exist or cannot be located[.]" EPA's new updated regulation does not state anything more than this.

3. EPA's decision to centralize the intake process will speed FOIA processing, not slow it.

EPA's decision to streamline submission of FOIA requests to its National FOIA Office will allow EPA to ensure consistent and coordinated communication with the public, regions, and program offices.

In 2018, the FOIA Federal Advisory Committee, convened by the National Archives, recommended that federal departments and agencies "centralize FOIA processing where appropriate." Centralized FOIA submission will allow EPA to ensure consistent and coordinated communication with the public, regions, and program offices.

Many other departments and agencies have gone further than EPA in streamlining the FOIA processing, such as Department of State, USAID, Social Security Administration (in the Office of General Counsel), the Securities and Exchange Commission, and Commodity Futures Trading Commission (in the Office of General Counsel), among others. EPA has left the FOIA response decisionmaking authority with the offices that are document custodians. Department of Labor has a similar centralized FOIA submission mailbox and decentralized FOIA processing and response structure.

Centralized FOIA intake and initial review will allow EPA to minimize coordination required for initial assignment of FOIA requests and to ensure consistency in early outreach to requesters. Centralized FOIA intake will allow EPA to gain efficiencies of scale in training, build upon common skills needed to for intake, and enhance counseling and sharing of knowledge and techniques.

4. EPA's decision to publish a final rule does not violate Administrative law

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EPA also published its FOIA updated regulation as a final rule without notice and public comment because EPA had no discretion for the changes mandated by the amendments to FOIA in 2007, 2009, and 2016.

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- NEH, National Foundation on the Arts and the Humanities, 82 FR 44 (01/03/2017)
- U.S. Nuclear Regulatory Commission, 81 FR 96344 (12/30/2016)
- Department of Energy, 81 FR 94915 (12/27/2016)
- U.S. International Trade Commission, 81 FR 86575 (12/01/2016)
- Farm Credit Administration, 81 FR 63365 (09/15/2019)
- Surface Transportation Board, 81 FR 90750 (12/15/2019)
- Office of Special Counsel, 82 FR 15609 (03/30/2017)
- National Labor Relations Board, 82 FR 11748 (02/24/2017)
- National Council on Disability, 81 FR 93791 (12/22/2016)
- Tennessee Valley Authority, 82 FR 41511 (09/01/2017)
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The updated regulation, like the 2002 regulations, continues to provide regional administrators, their deputies, and delegates the authority to issue final determinations.

Best Regards,

Elise Packard

Timothy R. Epp

Message

From: Abboud, Michael [abboud.michael@epa.gov]
Sent: 6/27/2019 5:59:35 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Konkus, John [konkus.john@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]; Schiermeyer, Corry [schiermeyer.corry@epa.gov]; Willey, Katharine [willey.katharine@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]
Subject: FW: EPA's Response to Society of Environmental Journalists Letter - Preview

With updated edits.

From: EPA Press Office <press@epa.gov>
Sent: Thursday, June 27, 2019 1:59 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: EPA's Response to Society of Environmental Journalists Letter - Preview

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Signed by, XXXX

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From: Konkus, John [konkus.john@epa.gov]
Sent: 6/27/2019 5:54:40 PM
To: Abboud, Michael [abboud.michael@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Willey, Katharine [willey.katharine@epa.gov]
CC: Schiermeyer, Corry [schiermeyer.corry@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]
Subject: RE: EPA's Response to Society of Environmental Journalists Letter - Preview

This week several media outlets misrepresented EPA's new FOIA regulation and were forced to correct their misreporting.

From: Abboud, Michael
Sent: Thursday, June 27, 2019 1:41 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Willey, Katharine <willey.katharine@epa.gov>
Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: FW: EPA's Response to Society of Environmental Journalists Letter - Preview

Below is the draft release, still waiting on the signatures to add their names and titles to it. The first two paragraphs are just highlighting the situation we are in with the inaccurate stories. It's a little strong so feel free to pull it back a bit. I think we're waiting on an official letter, and they we can press send to the SEJ with the press release sent right after. Let me know what edits you have.

From: EPA Press Office <press@epa.gov>
Sent: Thursday, June 27, 2019 1:39 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: EPA's Response to Society of Environmental Journalists Letter - Preview

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Signed by, XXXX

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Message

From: Grantham, Nancy [Grantham.Nancy@epa.gov]
Sent: 6/19/2019 8:53:53 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]
CC: Grantham, Nancy [Grantham.Nancy@epa.gov]
Subject: FOIA draft statement and mass mailer
Attachments: DRAFT Messaging for FOIA Regulations Update (06.11.2019).docx; DRAFT Desk Statement for FOIA Regulations Update (06.11.2019).docx

Ryan,

Please see attached draft press statement and mass mailer on the foia regs. I had asked them to consider your comments on 6/14 and update the statement – I am checking on that.

Thanks ng

From: Epp, Timothy
Sent: Friday, June 14, 2019 12:55 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: draft GC email re Regs

Hi Nancy, I've attached the text of a draft email that Matt could send to all EPA staff announcing the regulations. He has not yet reviewed. I'd welcome your review and comments.

Some questions for you to consider: Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks

Timothy R. Epp
|National FOIA Office
U.S. Environmental Protection Agency | Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC 2310A)
Washington, D.C. 20460 | WJCN 7309B
Phone (202) 564-2830| epp.timothy@epa.gov

National FOIA Office
EPA Office of General Counsel

Desk Statement

"Final Rule 'Freedom of Information Act Regulations Update'"

Ex. 5 Deliberative Process (DP)

Colleagues,

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Message

From: Schiermeyer, Corry [schiermeyer.corry@epa.gov]
Sent: 6/25/2019 5:49:49 PM
To: Abboud, Michael [abboud.michael@epa.gov]
CC: Jackson, Ryan [jackson.ryan@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]; Konkus, John [konkus.john@epa.gov]
Subject: Re: The Hill Falsely Reports On EPA's New FOIA Regulation - Preview

Agree. Thank you

Sent from my iPhone

On Jun 25, 2019, at 12:44 PM, Abboud, Michael <abboud.michael@epa.gov> wrote:

Corry one other addition, we want to include that have asked for a retraction.

From: EPA Press Office <press@epa.gov>
Sent: Tuesday, June 25, 2019 1:44 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: The Hill Falsely Reports On EPA's New FOIA Regulation - Preview

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Text does not display.

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<!--[if !vml]--><image001.png><!--[endif]-->

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Message

From: Abboud, Michael [abboud.michael@epa.gov]
Sent: 6/25/2019 5:44:54 PM
To: Schiermeyer, Corry [schiermeyer.corry@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]; Konkus, John [konkus.john@epa.gov]
Subject: FW: The Hill Falsely Reports On EPA's New FOIA Regulation - Preview

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Sent: Tuesday, June 25, 2019 1:44 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: The Hill Falsely Reports On EPA's New FOIA Regulation - Preview

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From: Schiermeyer, Corry [schiermeyer.corry@epa.gov]
Sent: 6/25/2019 5:34:35 PM
To: Abboud, Michael [abboud.michael@epa.gov]
CC: Konkus, John [konkus.john@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]
Subject: Re: draft

Ryan approved...see if the bolded last line in the first paragraph fits what you were asking for...

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Message

From: Abboud, Michael [abboud.michael@epa.gov]
Sent: 6/25/2019 5:28:58 PM
To: Schiermeyer, Corry [schiermeyer.corry@epa.gov]
CC: Konkus, John [konkus.john@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]
Subject: RE: draft

We need to include something along this line, because this was how the story fell apart. However we want to say it is fine, but the premise of the article is entirely false.

The premise on which the article was based was inaccurate and the whole story suffered for it.

From: Schiermeyer, Corry
Sent: Tuesday, June 25, 2019 1:22 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>
Subject: Re: draft

with edits...now for Ryan's input.

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Message

From: Abboud, Michael [abboud.michael@epa.gov]
Sent: 6/25/2019 5:11:28 PM
To: Schiermeyer, Corry [schiermeyer.corry@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; Konkus, John [konkus.john@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]
Subject: RE: The Hill Falsely Reports On EPA's New FOIA Regulation - Preview

Will do, but we need to get this out ASAP. Its starting to get Hill attention.

From: Schiermeyer, Corry
Sent: Tuesday, June 25, 2019 1:10 PM
To: Abboud, Michael <abboud.michael@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Konkus, John <konkus.john@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>
Subject: Re: The Hill Falsely Reports On EPA's New FOIA Regulation - Preview

please send this to me in text form in the body of an email, not in campaign monitor. I will have edits.

From: Abboud, Michael
Sent: Tuesday, June 25, 2019 1:03:50 PM
To: Schiermeyer, Corry; Jackson, Ryan; Konkus, John; McFaul, Jessica; Beach, Christopher; Brazauskas, Joseph; Epp, Timothy
Subject: FW: The Hill Falsely Reports On EPA's New FOIA Regulation - Preview

Ryan –

We want to push this out ASAP. Miranda is now doubling down, and getting enviro groups' attorneys to support her point of view.

From: EPA Press Office <press@epa.gov>
Sent: Tuesday, June 25, 2019 1:02 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: The Hill Falsely Reports On EPA's New FOIA Regulation - Preview

---

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From: Schiermeyer, Corry [schiermeyer.corry@epa.gov]
Sent: 6/25/2019 5:09:43 PM
To: Abboud, Michael [abboud.michael@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; Konkus, John [konkus.john@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]
Subject: Re: The Hill Falsely Reports On EPA's New FOIA Regulation - Preview

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From: Abboud, Michael
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To: Schiermeyer, Corry; Jackson, Ryan; Konkus, John; McFaul, Jessica; Beach, Christopher; Brazauskas, Joseph; Epp, Timothy
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To: Abboud, Michael <abboud.michael@epa.gov>
Subject: The Hill Falsely Reports On EPA's New FOIA Regulation - Preview

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Message

From: Grantham, Nancy [Grantham.Nancy@epa.gov]
Sent: 6/21/2019 7:23:51 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]; Abboud, Michael [abboud.michael@epa.gov]; Schiermeyer, Corry [schiermeyer.corry@epa.gov]
CC: Grantham, Nancy [Grantham.Nancy@epa.gov]
Subject: Desk Statement for FOIA Regulations Update (06.20.2019) (003).docx
Attachments: Desk Statement for FOIA Regulations Update (06.20.2019) (003).docx

See attached from Tim Epp – it is long but fully explains.

Thanks ng

Desk Statement

Ex. 5 Deliberative Process (DP)

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Message

From: Packard, Elise [Packard.Elise@epa.gov]
Sent: 11/2/2018 3:34:14 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]
Subject: Fw: Documents for 11:30 meeting w/ Matt
Attachments: Awareness notification process 10.30.docx; Draft FOIA Memo - Clean Updated 11 2 2018.docx; Monthly Backlog reduction memo 11-1-18.docx; OGC FOIA Improvement Initiatives 2018 - updated Nov 2.pptx

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From: Epp, Timothy
Sent: Friday, November 2, 2018 11:09 AM
To: White, Elizabeth; Packard, Elise; Brazauskas, Joseph; Blake, Wendy
Subject: Documents for 11:30 meeting w/ Matt

Elise, Joe, Wendy, and Beth,

Attached are copies of the documents we expect to discuss with Matt at 11:30. Either I or Wendy will bring additional copies to the meeting.

Document to send to the Administrator for Monday's meeting:

1) PowerPoint slides
2) Draft FOIA memo
3) Draft Awareness Notification memo

The following additional draft document will be available to show to Matt, but is not intended for sending to the Administrator: Draft Monthly Backlog Memo.

Tim

Timothy R. Epp
Acting Director, National FOIA Office
Office of General Counsel
U.S. Environmental Protection Agency
Tel. 202-564-2830

Awareness Notification Process for Select Freedom of Information Act (FOIA) Releases

Ex. 5 AC/DP

Ex. 5 AC/DP

Draft FOIA memo for issuance by Acting Administrator

Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP

MEMORANDUM

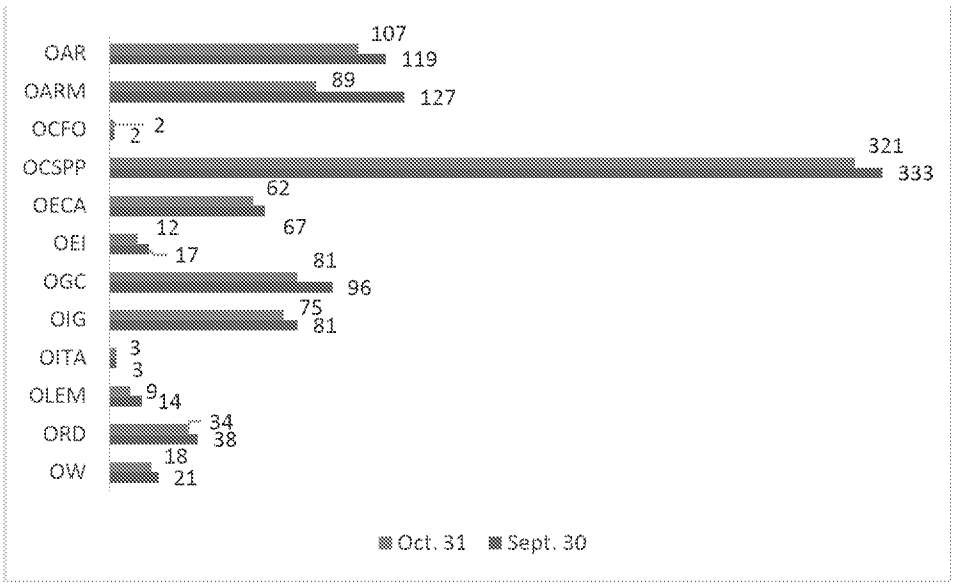
SUBJECT: EPA Freedom of Information Act (FOIA) Backlog

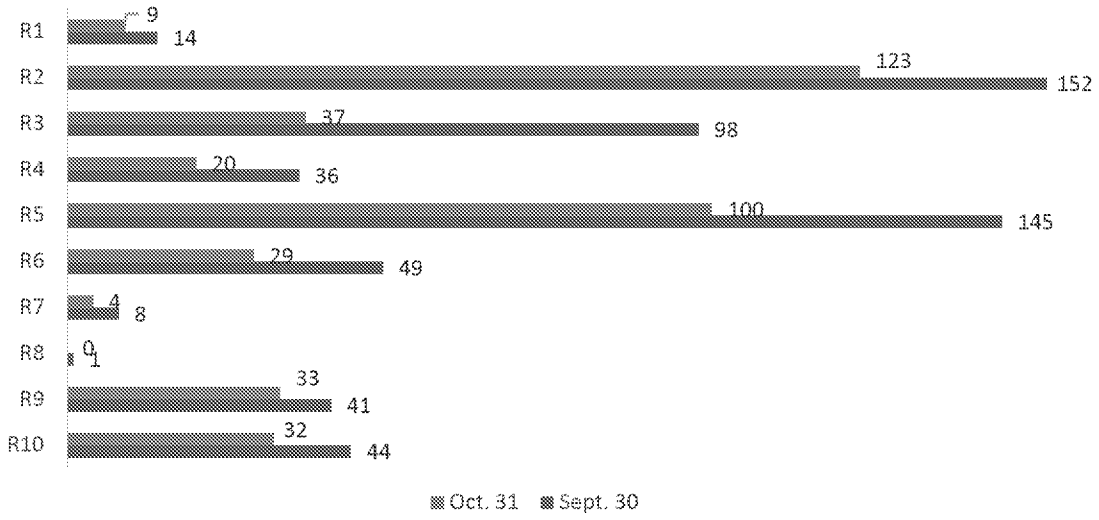
TO:

FROM:

THRU:

In his November __ Memorandum, Acting Administrator Wheeler asked the National FOIA Office to circulate this monthly report of the FOIA request backlog across EPA. Within the Administrator's Office, recent steps taken to improve FOIA processing have yielded significant results. Over 200 requests were closed and over 500 interim responses were issued from April 30 to now. A "Tiger Team" of 12 staff temporarily assigned to help process FOIAs has completed 1st, 2nd, and final reviews of more than 40,000 records from August 14 to now. Below are graphs showing the backlogged FOIA requests at the end of September and October in headquarters programs and the regions during the month of October. These graphs show that most program offices and regional offices made progress reducing their backlog FIOA requests during October.





Together we have made significant progress. And, as these numbers show, we have much left to accomplish. The Administrator's Office currently has a backlog of 1506. If you would like to discuss this data, or to discuss ideas on how we can more rapidly reduce the Agency's FOIA backlog or to meet the Agency's reporting requirements for FOIA, please contact me at xxxx.epa.gov or at (202) XXX-XXXX.

cc:

Message

From: Brazauskas, Joseph [brazauskas.joseph@epa.gov]
Sent: 11/2/2018 3:34:11 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]
Subject: Fwd: Documents for 11:30 meeting w/ Matt
Attachments: Awareness notification process 10.30.docx; ATT00001.htm; Draft FOIA Memo - Clean Updated 11 2 2018.docx; ATT00002.htm; Monthly Backlog reduction memo 11-1-18.docx; ATT00003.htm; OGC FOIA Improvement Initiatives 2018 - updated Nov 2.pptx; ATT00004.htm

Sent from my iPhone

Begin forwarded message:

From: "Epp, Timothy" <Epp.Timothy@epa.gov>
Date: November 2, 2018 at 11:09:59 AM EDT
To: "White, Elizabeth" <white.elizabeth@epa.gov>, "Packard, Elise" <Packard.Elise@epa.gov>, "Brazauskas, Joseph" <brazauskas.joseph@epa.gov>, "Blake, Wendy" <Blake.Wendy@epa.gov>
Subject: Documents for 11:30 meeting w/ Matt

Elise, Joe, Wendy, and Beth,

Attached are copies of the documents we expect to discuss with Matt at 11:30. Either I or Wendy will bring additional copies to the meeting.

Document to send to the Administrator for Monday's meeting:

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2) Draft FOIA memo
3) Draft Awareness Notification memo

The following additional draft document will be available to show to Matt, but is not intended for sending to the Administrator: Draft Monthly Backlog Memo.

Tim

Timothy R. Epp
Acting Director, National FOIA Office
Office of General Counsel
U.S. Environmental Protection Agency
Tel. 202-564-2830

Message

From: Vizian, Donna [Vizian.Donna@epa.gov]
Sent: 7/25/2018 2:10:19 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]
Subject: Fwd: Previous transparency memos
Attachments: Charts of Fishbowl Memo Differences.docx; ATT00001.htm; Crosswalk EPA's Fishbowl Memos wth 2017 comparison.docx; ATT00002.htm; Jackson Fishbowl Memo 2009.pdf; ATT00003.htm; Reilly Fishbowl Memo 1989.pdf; ATT00004.htm; Ruckelshaus Fishbowl Memo 1983.pdf; ATT00005.htm; Thomas Fishbowl Memo 1985.pdf; ATT00006.htm

Here you go

Begin forwarded message:

From: "Siciliano, CarolAnn" <Siciliano.CarolAnn@epa.gov>
Date: July 25, 2018 at 9:47:21 AM EDT
To: "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Vizian, Donna" <Vizian.Donna@epa.gov>
Cc: "Amorosi, Joanne" <Amorosi.Joanne@epa.gov>, "Cooper, Marian" <Cooper.Marian@epa.gov>, "Packard, Elise" <Packard.Elise@epa.gov>
Subject: RE: Previous transparency memos

Attached are EPA's four Fishbowl Memos. In chronological order, they are: Ruckelshaus (1983), Thomas (1985), Reilly (1989) & Jackson (2009).

Administrators Browner, Whitman, Leavitt and Johnson did NOT issue Fishbowl Memos; the Agency operated under Administrator Reilly's version during those 16+ years.

Also attached are two crosswalks comparing the Fishbowl Memos to each other and to an April 2017 version prepared for Administrator Pruitt. Acting Administrator Wheeler's version appears to resemble the Jackson Memo in many significant respects. Therefore, the portion of the crosswalk studying the April 2017 draft is probably unhelpful. But the rest of the crosswalk is interesting historically.

Counseling note: Ex. 5 AC/DP

Ex. 5 AC/DP

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-5489
siciliano.carolann@epa.gov

-----Original Message-----
From: Grantham, Nancy
Sent: Wednesday, July 25, 2018 9:37 AM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>

Cc: Amorosi, Joanne <Amorosi.Joanne@epa.gov>; Cooper, Marian <Cooper.Marian@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>
Subject: RE: Previous transparency memos

That's what we are looking for .. can you send the compilation? Thanks ng

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

-----Original Message-----
From: Minoli, Kevin
Sent: Wednesday, July 25, 2018 9:36 AM
To: Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Amorosi, Joanne <Amorosi.Joanne@epa.gov>; Cooper, Marian <Cooper.Marian@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>
Subject: Re: Previous transparency memos

Do you mean the fishbowl memos? If so, Carol Ann has a collection of those, I believe. She's also done a crosswalk between them.

Kevin S. Minoli
Principal Deputy General Counsel &
Designated Agency Ethics Official Office of General Counsel US Environmental Protection Agency Main Office Line: 202-564-8040

On Jul 25, 2018, at 7:56 AM, Vizian, Donna <Vizian.Donna@epa.gov> wrote:

GM - I am in search of transparency memos that have been issued by previous administrators. Please send along if you have them or an idea where I can find them.

Differences between EPA's Ruckelshaus, Jackson, and Pruitt Fishbowl Memos

These charts briefly summarize the changes that three of EPA's transparency memoranda (EPA's "Fishbowl Memos") have undergone: those issued by William Ruckelshaus (May 19, 1983), Lisa P. Jackson (April 23, 2009), and Administrator Scott Pruitt (pending 2017), with the Ruckelshaus Fishbowl Memo as the baseline. For the most part, Lisa Jackson's memo substantively retained the policies enumerated in Ruckelshaus' memo. Administrator Pruitt's memo also substantively retains some policies, but also makes key policy omissions and puts forth additional policies that neither Ruckelshaus nor Jackson have previously advanced. Key policy omissions from Jackson to Pruitt are in **bold** and have also been listed separately at the end of this document.

William Ruckelshaus (May 19, 1983) to Lisa P. Jackson (April 23, 2009)	
Ruckelshaus	**Jackson**
General Principles	(1) Adds that "affected parties" include "communities of color, Native Americans, people disproportionately impacted by pollution, small businesses, cities and towns working to meet their environmental responsibilities, and others who have been historically underrepresented in EPA decision-making." (2) Adds "critical, and independent" to provision that EPA will not accept any recommendation without "careful examination."
Appointment Calendars	Requires "working copy" of calendar to be made available to the public daily via EPA's website (Ruckelshaus memo required "copy" be made available "at the end of the week" in the physical OPA office).
Litigation & Formal Adjudication	(1) Adds obligation to protect privilege information and enforcement-sensitive information from unauthorized disclosure; (2) Changes consultation process for program personnel who receive inquiries from parties in litigation from: (a) immediately notify assigned attorney and directing the person to him/her to (b) consult with assigned attorney before responding to the person (3) Adds language about contacting a knowledgeable OGC, OECA, or ORC

	attorney if unsure of which attorneys are representing EPA in a specific case.
Rulemaking Proceedings	(1) Adds "regarding a proposed rule" qualifier; (2) Requires memo summarizing all oral communications during a meeting or phone conversation containing new factual information to be placed in docket, as opposed to the same or communications containing an argument likely to affect the final decision.
	Adds 3 new sections: (1) FOIA Policy (2) Contacts with Congress and the Press (3) Communications Generally

Lisa P. Jackson (April 23, 2009) to Administrator Scott Pruitt (pending 2017)	
Jackson	**Pruitt**
General Principles	(1) Introduces guiding principles: rule of law, cooperative federalism, and promoting public participation. The first 2 principles are completely new. (2) **Eliminates Jackson's language providing that EPA's decision-making offices will take affirmative steps to solicit the views of affected persons, including "communities of color, Native Americans, people disproportionately impacted by pollution, small businesses, cities and towns working to meet their environmental responsibilities, and others who have been historically underrepresented in EPA decision-making."** (3) **Eliminates provision that "EPA will not accord privileged status to any special interest, nor will it accept any recommendation or proposal without careful, critical, and independent examination."**
Appointment Calendars	**Section deleted.**
Litigation & Formal Adjudication	No changes.
Rulemaking Proceedings	Generally expands on Jackson's section by emphasizing the importance of process and

	applying the principles of rule of law, transparency, and openness to the rulemaking process. Otherwise, no changes.
Contacts with Congress and the Press	No changes.
Communications Generally	No changes.
FOIA Policy	Section deleted.
	Adds 6 new sections: (1) Rule of Law (2) Cooperative Federalism (3) Public Participation (4) Objective Science is Important (5) Sue and Settle (6) **FOIA Requests [Note: this section is substantially different from Jackson's FOIA Policy in two respects: (a) it eliminates policy in favor of disclosure; and (b) it eliminates requirement to ensure that CBI, trade secrets, and PII are adequately protected. It only commits EPA to responding to FOIA requests in a timely manner.]**

<u>*Key Policy Omissions from Jackson to Pruitt***</u>**

- **Jackson's special interests provision that EPA will not accord privileged status to special interests or accept any recommendation or proposal without careful, critical, and independent examination.**
- **Jackson and Ruckelshaus' Appointments Calendar section**
- **Jackson's environmental justice text requiring EPA to take affirmative steps to solicit views of historically underrepresented communities.**
- **Jackson's FOIA policy, although that is likely because it is based on Obama's FOIA policy, and there is nothing comparable in this administration.**

Cross-Walk

Ruckelshaus, Thomas, Reilly and Jackson Fishbowl Memos
(including 2017 drafts)

William Ruckelshaus (May 19, 1983)

- Title: Contacts with Persons Outside the Agency

- Introduction
  - Administrator Ruckelshaus had considered more stringent restrictions on contacts with those outside EPA, but concluded that additional restrictions would inhibit the free flow of information and views.
  - Reminds EPA employees to use common sense and good judgment and to conduct themselves with openness and integrity.

- General Principles
  - EPA will provide for the fullest possible public participation in decision-making.
  - EPA employees remain open and accessible to those representing all points of view.
  - EPA decision-makers must take affirmative steps to seek out the views of those affected by EPA decisions.
  - EPA will not accord privileged status to any special interest group or accept any recommendation without careful examination.

- Appointment Calendars
  - Directs that a copy of the Administrator's appointment calendar for each week be placed in OPA and made available to the public at the end of each week.
  - Directs the DA, Assistant Administrators, Associate Administrators, RAs, and Office Directors to do the same.

- Litigation and Formal Adjudication
  - Requires all communication with parties in litigation to go through attorneys assigned to the case.
  - Requires program personnel who receive inquiries from parties in litigation to immediately notify the assigned attorney and refer the caller to that attorney.
  - Addresses formal adjudication requirements.

- Rulemaking Proceedings
  - Directs EPA employees to ensure that the basis for decisions appears in the record.
  - Requires that all written comments received from persons outside EPA (whether during or after the comment period) be entered into the rulemaking docket.

- For meetings or other conversations, the Ruckelshaus memo requires EPA employees to place in the rulemaking docket a memo summarizing any significant new factual information or argument likely to affect the final decision.
- Reminds EPA employees that all interest groups should have an equal opportunity to meet with EPA.

Lee M. Thomas (May 31, 1985)

- Title: Contacts with Persons Outside the Agency
- Introduction: Reaffirms the guidelines established by former Administrator Ruckelshaus
- Content: Virtually identical to Ruckelshaus memo above, except in the Rulemaking Proceedings paragraph
- Rulemaking Proceedings: The Thomas Memo:
  - Deletes this language: "ensure[ ], as far as practicable, that final decisions are not taken on the basis of information or arguments which have not been disclosed to members of the public in a timely manner."
  - Inserts language directing EPA employees to fully explain the Agency's rationale in the preamble to the final rule.
  - Inserts language noting that material received by OMB from outside parties will be placed in the EPA public record.
- New Paragraph: Discusses engagement by EPA programs with the press:
  - Notes that nothing is served by any program limiting contacts with the press.
  - Asks employees to inform the AA and the EPA Press Office about employees' official contacts with the press.

William K. Reilly (February 27, 1980)

- Title: Conduct of the Agency's Business
- Introduction:
  - Affirms the need to build strong working partnerships with, e.g., state and local agencies, citizens and public interest groups, the environmental community, and business councils and trade and professional associations.
  - Reaffirms the guidelines established by former Administrators Ruckelshaus and Thomas.
- Content: Virtually identical to Thomas memo above, except Reilly adds a new Communications section.
- New Section: Communications Generally:
  - Incorporates Ruckelshaus and Thomas language regarding common sense, good judgment, openness and integrity.
  - Repeats Thomas' statements about EPA programs' engagement with the press and adds a reminder to coordinate with OPA on all communication materials.

Lisa P. Jackson (April 23, 2009)

- Title: Transparency in EPA's Operations
- Introduction:
  - Emphasizes the importance of transparency, accountability and trust.
  - Reaffirms the guidelines established by former Administrator Ruckelshaus.
- General Principles
  - Section retained
  - Additions:
    - Directs EPA offices also to solicit the views of communities of color, Native Americans, people disproportionately impacted by pollution, small businesses, cities and towns working on meet their environmental responsibilities and others who have been historically underrepresented in EPA decision-making.
    - Adds "critical, and independent" to provision that EPA will not accept any recommendation without "careful examination."

- Appointment Calendars
  - Section retained
  - Changes:
    - Requires a "working copy" of calendar (as opposed to just a copy) be provided to OPA and made available to the public "every day" (as opposed to weekly) on the EPA website (as opposed to in the physical OPA office).

- Litigation and Formal Adjudication
  - Section retained, but moved after Rulemaking Proceedings and amplified.
  - Significant Additions:
    - Notes that the conduct of litigation by EPA should reflect the principles of fairness and openness that apply to other EPA activities.
    - Adds obligation to protect privileged litigation and enforcement-sensitive information from unauthorized disclosure.
    - Encourages program personnel to contact an EPA attorney if they receive inquiries about pending litigation from non-parties.

- Rulemaking Proceedings
  - Generally, expands this section by emphasizing the importance of transparent rulemaking and robust dialogue with the public.
  - Notes that EPA employees should ensure that all written comments regarding a proposed rule are entered in the rulemaking docket.

        - Changes: the phrase "regarding a proposed rule" replaces the phrase "(whether during or after the comment period)" and "rulemaking docket" returns to the Ruckelshaus phrasing (instead of the Thomas/Reilly reference to the "public record").

    - Retains requirement to summarize in writing and place in the rulemaking docket any oral communication during a meeting or telephone discussion with a member of the public that contains significant new factual information regarding a proposed rule:
        - Changes: docket, not record; and "regarding a proposed rule," not "affecting a rule"
    - Equal access v. Equal opportunity: Urges EPA employees to attempt, to the maximum extent practicable, to "provide all interested persons with equal access to EPA."
        - Change: previous memos said that all interest groups should have "an equal opportunity to meet with EPA."
    - Adds a new paragraph encouraging staff to be creative and innovative in the tools and technology EPA uses to engage the public in decision-making.

Added 3 new sections:

- FOIA Policy
    - Major Points elaborating on President Obama policies:
        - EPA offices should favor disclosing documents whenever possible.
        - Only invoke exemption where agency reasonably foresees that disclosure would harm an exempted interest or violate law.\
    - Take affirmative steps to make information available without FOIA request.
    - Ensure that CBI, trade secrets, PII are adequately protected.

- Contacts with Congress and the Press
    - Information requests from Congress should be handled in consultation with affected EPA managers & OCIR
    - When interacting with the press, coordinate with OPA.
    - Acknowledges protections for whistleblowing activities.

- Communications Generally
    - Identifies OPA as the office primarily responsible for shaping EPA's communications with the public and states that OPA will provide further guidance on how HQ and the regions should coordinate with OPA in preparing messaging materials and interacting with the press.
    - Shortens Reilly addition by deletions and rearrangement.

Ex. 5 AC/DP

Ex. 5 AC/DP

CCILO Draft for Administrator Scott Pruitt (dated April 24, 2017, tweaked Dec. 12, 2017)

Ex. 5 AC/DP

EPA United States Environmental Protection Agency

All Hands Messages
Washington, DC

Date Published: 04/23/2009

Title: Transparency in EPA's Operations

Visit the Agency's Intranet for More Information

EPA@Work

All Hands Email-Archive

****

This message is being sent to all EPA Employees.
Please do not reply to this mass mailing.

****

MEMORANDUM

SUBJECT: Transparency in EPA's Operations

FROM: Lisa P. Jackson
Administrator

TO: All EPA Employees

In my testimony before the Senate Committee on Environment and Public Works and in my January 23, 2009, memorandum to all employees, I expressed my commitment to uphold the values of transparency and openness in conducting EPA operations. President Obama recently said in a memorandum to agency heads: "Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset." I am asking each one of you to help me ensure EPA operates in full compliance with this principle.

The success of our environmental efforts depends on earning and maintaining the trust of the public we serve. The American people will not trust us to protect their health or their environment if they do not trust us to be transparent and inclusive in our decision-making. To earn this trust, we must conduct business with the public openly and fairly.

In 1983, then-Administrator William Ruckelshaus promised that under his leadership, EPA would operate "in a fishbowl." I wish to reaffirm this commitment and take the opportunity to provide guidelines about how we will ensure transparency in our interactions with all members of the public. These guidelines are intended to maintain the fairness and openness of our operations and thus strengthen public confidence in our decisions. I am relying on EPA employees to use their good judgment to conduct themselves with the openness and integrity that alone can guarantee public trust in EPA.

General Principles

In all its programs, EPA will provide for the fullest possible public participation in decision-making. This requires not only that EPA remain open and accessible to those representing all points of view, but also that EPA offices responsible for decisions take affirmative steps to solicit the views of those who will be affected by these decisions. This includes communities of color, Native Americans, people disproportionately impacted by pollution, small businesses, cities and towns working to meet their environmental responsibilities, and others who have been historically underrepresented in EPA decision-making. EPA will not accord privileged status to any special interest, nor will it accept any recommendation or proposal without careful, critical, and independent examination.

Appointment Calendars

To keep the public fully informed of my contacts with interested persons, I have directed that a working copy of my appointment calendar, showing meetings with members of the public, be provided to the EPA Office of Public Affairs, where it will be available to the public each day on the EPA Web site. I also direct other senior Agency officials, including the Deputy Administrator, the Assistant Administrators, and the Regional Administrators, to make their working appointment calendars available to the public in a similar fashion.

Freedom of Information Act Policy

As President Obama has stated, the Freedom of Information Act should be administered with a clear presumption that openness prevails. All Agency personnel should ensure that this principle of openness is applied to the extent possible when responding to a FOIA request. Managers should give their staffs and the Agency's FOIA professionals the support needed to satisfy FOIA's transparency requirement in as timely and efficient a manner as possible. In accordance with guidance issued by Attorney General Holder on March 19,

2009, EPA offices should exercise their discretion in favor of disclosing documents whenever possible under the FOIA. Offices should assert an exemption to disclosure only where the Agency reasonably foresees that disclosure would harm an interest protected by an exemption or disclosure is prohibited by law. Offices should also take steps to make information public on the Agency's Web site without waiting for a request from the public to do so. More detailed FOIA implementation procedures will be provided in the near future to assist you in carrying out this important government responsibility.

Because EPA is a public regulatory agency and employer to about 18,000 employees, EPA staff may come into possession of certain information that may need to be protected from disclosure under FOIA, including certain contract or business data, trade secrets, or personal privacy information. Although the Agency's business is to be conducted in an open and accountable manner, we must also ensure that information entitled to special protection is handled with the utmost care and in full compliance with all applicable laws and regulations. Questions about whether special protections apply to certain information should be directed to the Office of General Counsel's General Law Office.

Rulemaking Proceedings

Much of EPA's business is conducted through rulemaking. It is crucial that we apply the principles of transparency and openness to the rulemaking process. This can only occur if EPA clearly explains the basis for its decisions and the information considered by the Agency appears in the rulemaking record. Therefore, each EPA employee should ensure that all written comments regarding a proposed rule received from members of the public, including regulated entities and interested parties, are entered into the rulemaking docket.

Robust dialogue with the public enhances the quality of our decisions. EPA offices conducting rulemaking are therefore encouraged to reach out as broadly as possible for the views of interested parties. However, while EPA may and often should meet with groups and individuals, we should attempt, to the maximum extent practicable, to provide all interested persons with equal access to EPA. In addition, it is essential to ensure that the public receives timely notice, as far as practicable, of information or views that have influenced EPA's decisions. This means that EPA employees must summarize in writing and place in the rulemaking docket any oral communication during a meeting or telephone discussion with a member of the public or an interested group that contains significant new factual information regarding a proposed rule.

Questions about how to handle comments and other communications regarding a proposed rule should be directed to the appropriate program office personnel, attorneys in the Office of General Counsel, or regional staff working on the specific rulemaking.

I am committed to fulfilling President Obama's direction to agency heads to make use of tools and technology to increase outreach and interaction with the public. Public participation in Agency rulemaking proceedings may take a variety of forms, including public hearings and meetings, workshops, forums, focus groups, surveys, roundtables, Federal Register notice-and-comment procedures, advisory committee meetings, informal meetings with interested parties, internet-based dialogues, and other opportunities for informal dialogue, consistent with applicable legal requirements. I encourage our staff to be creative and innovative in the tools we use to engage the public in our decision-making.

Litigation and Formal Adjudication

EPA is engaged in a wide range of litigation. The conduct of litigation by the Agency should reflect the principles of fairness and openness that apply to other EPA activities. However, we must also protect privileged litigation and enforcement-sensitive information from unauthorized disclosure. Communication with parties involved in litigation with EPA about that litigation should be through an attorney representing EPA in the case. Program personnel who receive inquiries about pending litigation from persons who are not parties to the litigation should consult with an attorney representing EPA in the case before responding. If you do not know which attorneys are representing EPA in a specific case, contact knowledgeable EPA lawyers, including the Office of General Counsel, the Office of Enforcement and Compliance Assurance, or an Office of Regional Counsel, as appropriate.

Formal adjudications (including certain administrative penalty proceedings and pesticide cancellation proceedings) are also governed by specific requirements that limit communications between EPA staff and interested parties. These limitations appear in the various EPA rules governing those proceedings. Information about these rules is available from the Office of General Counsel and on the EPA Intranet.

Contacts with Congress and the Press

EPA often receives requests for records or information from Congress, i.e. the Speaker of the House, the President of the Senate, the Chair of a Committee or

Subcommittee with jurisdiction over EPA. It also receives informal requests from individual members of Congress and their staffs. I recognize the importance of Congressional oversight and encourage our programs to provide Congress with the information necessary to satisfy its oversight and legislative interests to the extent possible and consistent with our Constitutional and statutory obligations. Information requests from Congress should be handled in consultation with managers of the affected EPA programs and our legislative affairs staff in the Office of Congressional and Intergovernmental Relations.

EPA also should be accessible to the press, which performs a vital role in informing the public about EPA's actions. As we respond to press inquiries, the EPA staff should respect our internal deliberative processes and strive for accuracy and integrity in our communications. This will ultimately enhance public trust in the Agency. When interacting with the press in the performance of your official duties, please coordinate with the managers of your program and media relations experts in the Office of Public Affairs.

Nothing contained in this memorandum interferes with your right to petition or to furnish information to Congress or a Member of Congress, as provided under applicable law, or to engage in protected whistleblowing activities.

Communications Generally

The Office of Public Affairs plays a central role in shaping the Agency's communications with the public. OPA will be providing further guidance on how our programs and regions should coordinate with it on the preparation of messaging materials and interactions with the press.

Conclusion

I have the utmost confidence in the ability of EPA's workforce to promote full public involvement and openness in all EPA affairs. I believe this will enhance the credibility of the Agency, boost public trust in our actions and improve the quality of our decisions. In short, we will let more sunlight into our Agency. I look forward to hearing any additional ideas you may have on how we can achieve this goal.

As I continue to work with all of you, I plan to provide further thoughts on how we can strengthen EPA's public role in serving the needs of the public and advancing our environmental protection mission.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 27 1989

THE ADMINISTRATOR

MEMORANDUM FOR: All EPA Employees

SUBJECT: Conduct of the Agency's Business

I look forward to meeting and working with many of you as I take up my duties as Administrator of the Environmental Protection Agency.

Together, as a team, we must tackle some of the most pressing and vexing problems that confront our nation and, as we have become acutely aware in recent years, our planet. The very health and well-being of millions of people depend on the decisions we make and the effectiveness with which we pursue our mission. We at EPA, indeed the federal government, cannot alone do all that is necessary. We must continue to build strong working partnerships with state and local agencies, with citizens and public interest groups, with the environmental community, with business councils and trade and professional associations, with scientists, and with many others who have important roles to play in protecting public health and the environment.

My immediate predecessors, Lee Thomas and William Ruckelshaus, offered guidelines for EPA staff contacts with people outside the Agency, and I wish to affirm them. The success of our efforts at EPA directly depends on the trust of the public we serve. We must seek at all times to earn and maintain that trust, and we must conduct our business openly and fairly, responding as best we can to the needs of the people we serve. The guidelines below should maintain the fairness and openness of our procedures and thus strengthen public confidence in our decisions.

General Principles

EPA must provide, in all its programs, for the fullest possible participation by the public in our decisionmaking. This requires not only that EPA staff remain open and accessible to those representing all points of view, but also that EPA employees responsible for decisions take affirmative steps to seek out the views of those who will be affected by the decisions. EPA will not accord privileged status to any special interest, nor accept any recommendation or proposal without careful, critical examination.

Appointment Calendars

To keep the public fully informed of my contacts with interested parties, a copy of my appointment calendar for each week will be placed in the Office of Public Affairs, available to whomever is interested at the end of the week. The Deputy Administrator, and all Assistant Administrators, Associate Administrators, Regional Administrators, and Staff Office Directors similarly shall make their appointment calendars available.

Litigation and Formal Adjudication

EPA is engaged in a wide range of litigation, both enforcement and defensive in nature. All communication with parties in litigation must be through the attorneys assigned to the case. Program personnel who receive inquiries from parties in matters under litigation must immediately notify the assigned attorney, and refer the caller to that attorney.

Formal adjudications, such as pesticide cancellation proceedings, are governed by specific requirements concerning ex parte communications, which appear in the various EPA rules governing those proceedings. These rules are collected and available in the Office of the General Counsel, Room 537 West Tower. I will conduct myself in accordance with these rules, and I expect all EPA employees to do the same.

Rulemaking Proceedings

In rulemaking proceedings under the Administrative Procedure Act, EPA employees must ensure that the basis for the Agency's decision appears in the public record. Therefore, be certain (1) that all written comments received from people outside the Agency (whether during or after the comment period) are entered in the public record for the rulemaking, and (2) that a memorandum summarizing any significant new factual data or information likely to affect the final decision received during a meeting or other conversations also is placed in the public record.

You are encouraged, consistent with statutory responsibilities, to reach as broadly as possible for views to assist you in arriving at final rules. You should do so, however, in a manner that ensures that final decisions are supported by the public record and the Agency's rationale is fully explained in the preamble to the final rule. This does not mean that you may not meet with one special interest group without inviting all other interest groups to the same meeting, although all such groups should have an equal opportunity to meet with EPA. It does mean, however, that any oral communication regarding significant new factual data or information affecting a rule, including a meeting with an interest group, should be summarized in writing and placed in the public record. In addition to these guidelines, procedures have been established with OMB to ensure that relevant material received by OMB from outside parties will be placed in the EPA public record.

Communications Generally

I am confident that I can rely on EPA staff to use common sense and good judgement in communicating with the public. The openness and integrity with which we deal with the public is essential to ensuring public trust in the Agency.

I firmly believe in developing and maintaining an effective communications capability. The Agency has taken important steps to strengthen these capabilities, and I want to see continuing emphasis on communications planning, including commitment by the programs and the regions of appropriate personnel and other resources to achieve this.

In dealing with the press, EPA staff should be open and accessible; none of our goals is well served by limiting contact with the press. Those who speak to the press should concern themselves only with their particular area of expertise. Please inform your Assistant Administrator's office and the EPA Press Office promptly about all such conversations with the press.

Finally, all communications materials, written and audio-visual, produced for public dissemination should be developed in coordination with the Office of Public Affairs, which is to assure they are done cost-effectively, done in-house or by outside contractors as warranted, and are consistent with EPA graphic standards and a number of OMB directives on such materials.

We have entered a new era in which I expect EPA to play a leading role in developing solutions to complex environmental problems and in strengthening our already firm commitment to achieving steady, tangible environmental progress. In my dealings with EPA staff to date, I have been thoroughly impressed with the professionalism and dedication of everyone. I find myself energized by the challenge ahead, and look forward to working with you all to improve the quality of our environment.

William K. Reilly

William K. Reilly

MEMORANDUM

SUBJECT: Contacts with Persons Outside the Agency

TO: All EPA Employees

When I recently appeared before the Senate Committee on Environment and Public Works, I promised that EPA would operate "in a fishbowl." I said, "We will attempt to communicate with everyone from the environmentalists to those we regulate and we will do so as openly as possible. " Therefore, I believe it is important to set out for the guidance of all EPA employees a set of basic principles to guide our communications with the public.

In formulating these principles I considered more stringent restrictions on contacts with those outside the Agency than those described below. At my request, my staff met with staff members of the Administrative Conference of the United States to discuss these issues. This organization is an independent agency that develops improvements to the legal procedures by which Federal agencies administer their programs. Based on the recommendations of the staff members of the Administrative Conference and those of the Office of General Counsel, I am convinced that restrictions beyond those set out below would unnecessarily inhibit the free flow of information and views. In adopting these flexible procedures I am relying on EPA employees to use their common sense and good judgment to conduct themselves with the openness and integrity which alone can ensure public trust in the Agency.

General Principles

EPA will provide, in all its programs, for the fullest possible public participation in decision-making. This requires not only that EPA employees remain open and accessible to those representing all points of view, but also that EPA employees responsible for decisions take affirmative steps to seek out the views of those who will be affected by the decisions. EPA will not accord privileged status to any special interest group, nor will it accept any recommendation without careful examination.

Appointment Calendars

In order to make the public fully aware of my contacts with interested persons, I have directed that a copy of my appointment calendar for each week be placed in the Office of Public Affairs and made available to the public at the end of the week. The Deputy Administrator, and all Assistant Administrators, Associate Administrators, Regional Administrators, and Staff Office Directors shall make their appointment calendars available in a similar manner.

Litigation and Formal Adjudication

EPA is engaged in a wide range of litigation, both enforcement and defensive in nature. All communication with parties in litigation must be through the attorneys assigned to the case. Program personnel who receive inquiries from parties in matters under litigation should immediately notify the assigned attorney, and should refer the caller to that attorney.

Formal adjudications, such as pesticide cancellation proceedings, are governed by specific requirements concerning ex parte communications, which appear in the various EPA rules governing those proceedings. These rules are collected and available in the Office of General Counsel, Room 545, West Tower. I will conduct myself in accordance with these rules, and I expect all EPA employees to do the same.

Rulemaking Proceedings

In either formal or informal rulemaking proceedings under the Administrative Procedures Act, EPA employees must ensure that the basis for the Agency's decision appears in the record. Therefore, be certain (1) that all written comments received from persons outside the Agency (whether during or after the comment period) are entered in the rulemaking docket, and (2) that a memorandum summarizing any significant new factual information or argument likely to affect the final decision received during a meeting or other conversations is placed in the rulemaking docket.

You are encouraged to reach out as broadly as possible for views to assist you in arriving at final rules. However, you should do so in a manner that ensures, as far as practicable, that final decisions are not taken on the basis of information or arguments which have not been disclosed to members of the public in a timely manner. This does not mean that you may not meet with one special interest group without inviting all other interest groups to the same meeting, although all such groups should have an equal opportunity to meet with EPA. It does mean, however, that any oral communication regarding significant new factual information or argument affecting a rule, including a meeting with an interest group, should be summarized in writing and placed in the rulemaking docket for the information of all members of the public.

William D. Ruckelshaus

(5/31)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 31 1985

THE ADMINISTRATOR

MEMORANDUM

TO: All EPA Employees

SUBJECT: Contacts With Persons Outside The Agency

I want to take this opportunity to reaffirm the guidelines established by former Administrator William D. Ruckelshaus concerning EPA contacts with persons outside of the Agency. The success of our efforts at EPA is directly dependent on the trust of the public we serve. To earn and maintain that trust, we must operate in an open manner, we must be responsive, and we must conduct our business in as fair a manner as possible. I believe that the guidelines set out below will serve to maintain the fairness and openness of our procedures and the public's confidence in our decisions.

General Principles

EPA will provide, in all its programs, for the fullest possible public participation in decisionmaking. This requires not only that EPA employees remain open and accessible to those representing all points of view, but also that EPA employees responsible for decisions take affirmative steps to seek out the views of those who will be affected by the decisions. EPA will not accord privileged status to any special interest group, nor will it accept any recommendation without careful critical examination.

Appointment Calendars

In order to make the public fully aware of my contacts with interested persons, I have directed that a copy of my appointment calendar for each week continue to be placed in the Office of Public Affairs and made available to the public at the end of the week. The Deputy Administrator, and all Assistant Administrators, Associate Administrators, Regional Administrators, and Staff Office Directors shall make their appointment calendars available in a similar manner.

Litigation and Formal Adjudication

EPA is engaged in a wide range of litigation, both enforcement and defensive in nature. All communication with parties in litigation must be through the attorneys assigned to the case. Program personnel who receive inquiries from parties in matters under litigation should immediately notify the assigned attorney, and should refer the caller to that attorney.

Formal adjudications, such as pesticide cancellation proceedings, are governed by specific requirements concerning ex parte communications, which appear in the various EPA rules governing those proceedings. These rules are collected and available in the Office of General Counsel, Room 545, West Tower. I will conduct myself in accordance with these rules, and I expect all EPA employees to do the same.

Rulemaking Proceedings

In rulemaking proceedings under the Administrative Procedure Act, EPA employees must ensure that the basis for the Agency's decision appears in the public record. Therefore, be certain (1) that all written comments received from persons outside the Agency (whether during or after the comment period) are entered in the public record for the rulemaking, and (2) that a memorandum summarizing any significant new factual data or information likely to affect the final decision received during a meeting or other conversations is placed in the public record.

You are encouraged consistent with statutory responsibilities to reach out as broadly as possible for views to assist you in arriving at final rules. However, you should do so in a manner that ensures that final decisions are supported by the public record and the Agency's rationale is fully explained in the preamble to the final rule. This does not mean that you may not meet with one special interest group without inviting all other interest groups to the same meeting, although all such groups should have an equal opportunity to meet with EPA. It does mean, however, that any oral communication regarding significant new factual data or information affecting a rule, including a meeting with an interest group, should be summarized in writing and placed in the public record for the information of all members of the public. In addition to these guidelines, procedures have been established with OMB to ensure that such material received by OMB from outside parties will be placed in the EPA public record.

Finally, in our dealing with the press, I would urge EPA employees also to be open and accessible. While it is important that those who speak to the press concern themselves only with their particular area of expertise, nothing is served by any program limiting contacts with the press. I ask that you inform your Assistant Administrator's office and the EPA Press Office about your official contacts with the press.

I know that I can rely on EPA employees to use common sense and good judgment in their dealing with the public. The openness and integrity in those dealings are essential to ensuring public trust in the Agency.

Lee M. Thomas

Lee M. Thomas

cc: AX (3)

Prepared by: GHYamada:jgb:475-8064:5/24/85
Rewritten:Gerald H. Yamada:jgb:5/28/85

Message

From: Abboud, Michael [abboud.michael@epa.gov]
Sent: 7/17/2018 2:20:43 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]
CC: Konkus, John [konkus.john@epa.gov]; Hewitt, James [hewitt.james@epa.gov]
Subject: Tweet from @EPA
Attachments: Letter to Ranking Member Elijah E. Cummings Regarding EPA's FOIA Expert Assistance Team.pdf

Ryan-

We're planning on sending out the tweet below along with the attached document as soon as possible. Do you have any comments or concerns?

EPA is working to increase transparency and provide timely responses to FOIA requests from the public. EPA is implementing lean management principles and hired new staffers to process requests to better serve Americans. See more below in our response to @RepCummings

266 characters.

Michael Abboud
U.S. Environmental Protection Agency
Office of Public Affairs
M: 202-564-6461

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 7/15/2018 11:12:15 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]
CC: Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]
Subject: RE: Final Signed Letter
Attachments: Letter to Ranking Member Elijah E. Cummings Regarding EPA's FOIA Expert Assistance Team.Final.pdf

Here is the final final version. Kevin

Kevin S. Minoli
Principal Deputy General Counsel
& Designated Agency Ethics Official
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8064

From: Jackson, Ryan
Sent: Sunday, July 15, 2018 6:49 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Cc: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: Re: Final Signed Letter

Thanks. I will transmit except one thing. Do you want to fix that Perciasepe turned "to" you? Currently, it's missing a word there.

Ryan Jackson
Chief of Staff
U.S. EPA
202-564-6999

On Jul 15, 2018, at 6:01 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

Here it is. Ryan, I will leave it to you to transmit it, if that works. Thanks, Kevin

Kevin S. Minoli
Principal Deputy General Counsel
& Designated Agency Ethics Official
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8064

<Letter to Ranking Member Elijah E. Cummings Regarding EPA's FOIA Expert Assistance Team.pdf>

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 7/15/2018 8:28:43 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]
CC: Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]
Subject: RE: Draft Letter
Attachments: FINAL DRAFT Letter to RM Cummings Re FEAT.docx

Here is the final draft that you can share with her. I will format it and sign it later this afternoon. Kevin

Kevin S. Minoli
Principal Deputy General Counsel
& Designated Agency Ethics Official
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8064

From: Jackson, Ryan
Sent: Sunday, July 15, 2018 1:35 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Cc: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: Re: Draft Letter

We can. Can you shoot me the final and I can let her know?

I think gowdy and Cummings will be shocked we responded, so quickly, and in this manner. It recognizes their oversight role in a very legit response. I hope that it also is a marker of turning a page.

I suppose it's actually a good thing Cummings wrote about this. It's an opportunity to highlight the work involved in this and highlight what we plan to do moving forward.

Ryan Jackson
Chief of Staff
U.S. EPA
202-564-6999

On Jul 15, 2018, at 12:08 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

You are welcome. I will make the couple edits, but on letterhead, and sign. Ryan, let me know if we should give Beth a chance to eye it first.

Kevin S. Minoli
Principal Deputy General Counsel &

Designated Agency Ethics Official
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Jul 15, 2018, at 7:59 AM, Leopold, Matt (OGC) <Leopold.Matt@epa.gov> wrote:

I've reviewed and this looks like a great draft. Thank you Kevin.

Sent from my iPhone

On Jul 14, 2018, at 9:43 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

Ex. 5 AC/DP

Kevin S. Minoli
Principal Deputy General Counsel &
Designated Agency Ethics Official
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Jul 14, 2018, at 6:52 PM, Jackson, Ryan
<jackson.ryan@epa.gov> wrote:

Ex. 5 AC/DP

Ex. 5 AC/DP

Ryan Jackson
Chief of Staff
U.S. EPA
202-564-6999

On Jul 13, 2018, at 8:51 PM, Minoli, Kevin
<Minoli.Kevin@epa.gov> wrote:

Ex. 5 AC/DP

Ex. 5 AC/DP

Kevin

Kevin S. Minoli
Principal Deputy General Counsel &
Designated Agency Ethics Official
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Jul 13, 2018, at 8:03 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Ex. 5 AC/DP

From: Jackson, Ryan
Sent: Friday, July 13, 2018 7:53 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: RE: Draft Letter

Ex. 5 AC/DP

Ex. 5 AC/DP

What do you think?

From: Minoli, Kevin
Sent: Friday, July 13, 2018 7:45 PM
To: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: Draft Letter

Ex. 5 AC/DP

Ex. 5 AC/DP

Kevin

Kevin S. Minoli

Principal
Deputy General Counsel

Office of General
Counsel

US Environmental
Protection Agency

Office Line: 202-564-
8064

Direct Dial: 202-564-
5551

Message

From: Wooden-Aguilar, Helena [Wooden-Aguilar.Helena@epa.gov]
Sent: 5/15/2018 8:58:36 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]
CC: White, Elizabeth [white.elizabeth@epa.gov]
Subject: FOIA

Ryan – I completely forgot that you sent this message below out to Troy, Liz, and Brittany. This is exactly what we are using to help build this out.

AO Centralization in OEX – Increase of 7-10 FTEs in OEX through Reassignment from OP, OPA and OCIR:

- Four offices in the AO have been involved in a Centralization Pilot Project ("AO4 Pilot") with OGC's FOIA Expert Assistance Team (the "FEAT"). The four offices include OEX, OP, OPA and OCIR (the "AO4"). Because this was established as a pilot project, it is unclear whether OGC intends to continue managing the AO4 FOIA process, particularly given the other FOIA responsibilities being transferred to OGC.

- Centralizing the FOIA process in AO will lead to greater efficiencies and compliance with the agency's obligations under the FOIA statute. I propose centralizing the FOIA process for those offices in the AO4 in OEX because OEX already manages records and correspondence for the Administrator, Deputy Administrator and Chief of Staff, and coordinates and oversees the FOIA process with the other offices in the AO. From the Presidential Inauguration and the 8 months following the Inauguration, the AO received 921 FOIA requests compared with 155 in the previous year. The AO's current FOIA backlog is 1,082. OEX currently has three FTEs dedicated to processing FOIA in the AO; however, to adequately address the remarkable increase in FOIA requests in the AO more FTEs will be required. I propose to reassign the FTEs who are currently working on the AO4 project from OP, OPA and OCIR to OEX for permanent centralization of AO4 FOIA processing. This would result in an increase of approximately 7-9 FTEs in OEX but should not increase the overall number of FTEs in the AO as a whole as these would be reassignments. OEX may request one additional FTE who is currently a manager to assist in directly managing the processing of FOIAs in the AO4; however, this FTE could also be reassigned from another program office.

- Centralizing the FOIA process in OEX, and reassigning the FTEs from OP, OPA and OCIR to OEX, will help minimize the potential collective bargaining issues and management conflicts that are present when managing staff across program offices. Moreover, due to the sensitivity of the records that are often subject to FOIA requests in the AO, it is helpful to have the same people review those records to ensure consistency and an understanding of those sensitivities.

I have copied Beth in case I have misspoke. Let me know if you need anything beyond this…

Helena

From: Jackson, Ryan
Sent: Monday, April 23, 2018 1:56 PM
To: Lyons, Troy <lyons.troy@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Leopold, Matt <Leopold.Matt@epa.gov>; Darwin, Henry <darwin.henry@epa.gov>; Wheeler, Andrew <wheeler.andrew@epa.gov>; Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>
Subject: Beth needs your help. So do I.

Last week the National FOIA Center was moved from OEI to OGC. OGC runs a program called FEAT, as you may be aware, focusing on expediting and processing some of the more complicated FOIAs. FEAT was set up by Deputy Administrator Perciasepe due to problems with OEI processing. FEAT will continue to exist with OGC now working with the National FOIA Center, but we need to take additional steps. The following is Beth's plan on processing FOIAs

through the AO. I am contacting you because you have individuals in your shops processing FOIAs and I believe that we would all be best served by allowing those individuals to directly report to Beth so we can best get FOIA's out.

The following is the description. I would like to meet this week sometime to chart out how best to take this additional step on the FOIA production process.

AO Centralization in OEX – Increase of 7-10 FTEs in OEX through Reassignment from OP, OPA and OCIR:

- Four offices in the AO have been involved in a Centralization Pilot Project ("AO4 Pilot") with OGC's FOIA Expert Assistance Team (the "FEAT"). The four offices include OEX, OP, OPA and OCIR (the "AO4"). Because this was established as a pilot project, it is unclear whether OGC intends to continue managing the AO4 FOIA process, particularly given the other FOIA responsibilities being transferred to OGC.
- Centralizing the FOIA process in AO will lead to greater efficiencies and compliance with the agency's obligations under the FOIA statute. I propose centralizing the FOIA process for those offices in the AO4 in OEX because OEX already manages records and correspondence for the Administrator, Deputy Administrator and Chief of Staff, and coordinates and oversees the FOIA process with the other offices in the AO. From the Presidential Inauguration and the 8 months following the Inauguration, the AO received 921 FOIA requests compared with 155 in the previous year. The AO's current FOIA backlog is 1,082. OEX currently has three FTEs dedicated to processing FOIA in the AO; however, to adequately address the remarkable increase in FOIA requests in the AO more FTEs will be required. I propose to reassign the FTEs who are currently working on the AO4 project from OP, OPA and OCIR to OEX for permanent centralization of AO4 FOIA processing. This would result in an increase of approximately 7-9 FTEs in OEX but should not increase the overall number of FTEs in the AO as a whole as these would be reassignments. OEX may request one additional FTE who is currently a manager to assist in directly managing the processing of FOIAs in the AO4; however, this FTE could also be reassigned from another program office.
- Centralizing the FOIA process in OEX, and reassigning the FTEs from OP, OPA and OCIR to OEX, will help minimize the potential collective bargaining issues and management conflicts that are present when managing staff across program offices. Moreover, due to the sensitivity of the records that are often subject to FOIA requests in the AO, it is helpful to have the same people review those records to ensure consistency and an understanding of those sensitivities.

Ryan Jackson
Chief of Staff
U.S. Environmental Protection Agency
(202) 564-6999

Message

From: White, Elizabeth [white.elizabeth@epa.gov]
Sent: 4/23/2018 5:49:25 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]
Subject: Fwd: OEX justification

This?

Sent from my iPhone

Begin forwarded message:

> **From:** "White, Elizabeth" <white.elizabeth@epa.gov>
> **Date:** March 29, 2018 at 10:12:52 AM EDT
> **To:** "Jackson, Ryan" <jackson.ryan@epa.gov>, "Darwin, Henry" <darwin.henry@epa.gov>
> **Subject: Fwd: OEX justification**

AO Centralization in OEX – Increase of 7-10 FTEs in OEX through Reassignment from OP, OPA and OCIR: Four offices in the AO have been involved in a Centralization Pilot Project ("AO4 Pilot") with OGC's FOIA Expert Assistance Team (the "FEAT"). The four offices include OEX, OP, OPA and OCIR (the "AO4"). Because this was established as a pilot project, it is unclear whether OGC intends to continue managing the AO4 FOIA process, particularly given the other FOIA responsibilities being transferred to OGC. Centralizing the FOIA process in AO will lead to greater efficiencies and compliance with the agency's obligations under the FOIA statute. I propose centralizing the FOIA process for those offices in the AO4 in OEX because OEX already manages records and correspondence for the Administrator, Deputy Administrator and Chief of Staff, and coordinates and oversees the FOIA process with the other offices in the AO. From the Presidential Inauguration and the 8 months following the Inauguration, the AO received 921 FOIA requests compared with 155 in the previous year. The AO's current FOIA backlog is 1,082. OEX currently has three FTEs dedicated to processing FOIA in the AO; however, to adequately address the remarkable increase in FOIA requests in the AO more FTEs will be required. I propose to reassign the FTEs who are currently working on the AO4 project from OP, OPA and OCIR to OEX for permanent centralization of AO4 FOIA processing. This would result in an increase of approximately 7-9 FTEs in OEX but should not increase the overall number of FTEs in the AO as a whole as these would be reassignments. OEX may request one additional FTE who is currently a manager to assist in directly managing the processing of FOIAs in the AO4; however, this FTE could also be reassigned from another program office.
Centralizing the FOIA process in OEX, and reassigning the FTEs from OP, OPA and OCIR to OEX, will help minimize the potential collective bargaining issues and management conflicts that are present when managing staff across program offices. Moreover, due to the sensitivity of the records that are often subject to FOIA requests in the AO, it is helpful to have the same people review those records to ensure consistency and an understanding of those sensitivities.

Beth White
Director, Office of the Executive Secretariat
U.S. Environmental Protection Agency
(202) 564-1781 direct

(202) 816-1701 cell

Message

From: White, Elizabeth [white.elizabeth@epa.gov]
Sent: 4/19/2018 6:20:43 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]
Subject: FW: FOIA Transfer Update
Attachments: image2018-04-19-131832.pdf; National FOIA Office Draft Intranet Content.docx

Beth White
Director, Office of the Executive Secretariat
U.S. Environmental Protection Agency
(202) 564-1781 direct
(202) 816-1701 cell

From: Burke, Marcella
Sent: Thursday, April 19, 2018 2:01 PM
To: White, Elizabeth <white.elizabeth@epa.gov>
Subject: FW: FOIA Transfer Update

FYI

Marcella Burke
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460
(202) 564-1609
burke.marcella@epa.gov

From: Bigioni, Neil
Sent: Thursday, April 19, 2018 1:51 PM
To: Burke, Marcella <burke.marcella@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>
Subject: RE: FOIA Transfer Update

Marcella,

In anticipation of a future in-person discussion, I've attached some materials that Becky Dolph left me that may answer some of your questions:

1. The post-reorg organization chart for OGC in pdf showing the National FOIA office as an AA-ship level office in OGC separate from GLO.
2. Draft materials in Word for a new National FOIA Office intranet site (still a work in progress) that briefly describe the structure the FEAT and the FOIT. Currently the roles of the FEAT, the FOIT and GLO ILPG remain essentially as they were before the reorganization.
3. You will note that in the Word document it describes two Assistant Directors/Team Leaders: Larry Gottesman will currently be acting Assistant Director/Team Leader for the FOIT; Denise Walker will be acting Assistant Director/Team Leader for the FEAT.

I am sorry, but I do not know to which Steve you are referring. If you mean Steve Fine, he has no role in the new organization.
And one minor correction to Kevin's email: I am the DRC in R3, not R2. I have been working closely with Elise Packard on logistics.

Please let me know how I can assist you,

Neil

From: Burke, Marcella
Sent: Thursday, April 19, 2018 1:06 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Bigioni, Neil <bigioni.neil@epa.gov>
Subject: RE: FOIA Transfer Update

Thanks. Can you explain the org chart for this? Will it be an AA-ship, or does it fall under GLO. How do FEAT and FOIT fit in? What are Larry's and Steve's roles?

Marcella Burke
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460
(202) 564-1609
burke.marcella@epa.gov

From: Minoli, Kevin
Sent: Thursday, April 19, 2018 1:03 PM
To: Burke, Marcella <burke.marcella@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Bigioni, Neil <bigioni.neil@epa.gov>
Subject: RE: FOIA Transfer Update

Hi Marcella- The program folks transitioned to OGC on Sunday, so we now are the home of the National FOIA Office. Neil is the Acting Director and has come down from Region 2 for 120 days. While the reorganization is done on paper, we need to relocate the former-OEI employees over to this building and have space on the 5th floor where they will move in the upcoming weeks. That is the overview and Neil could furnish more details if we need more. Thanks, Kevin

Kevin S. Minoli
Principal Deputy General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8064

From: Burke, Marcella
Sent: Thursday, April 19, 2018 12:59 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Dolph, Becky <Dolph.Becky@epa.gov>
Subject: FOIA Transfer Update

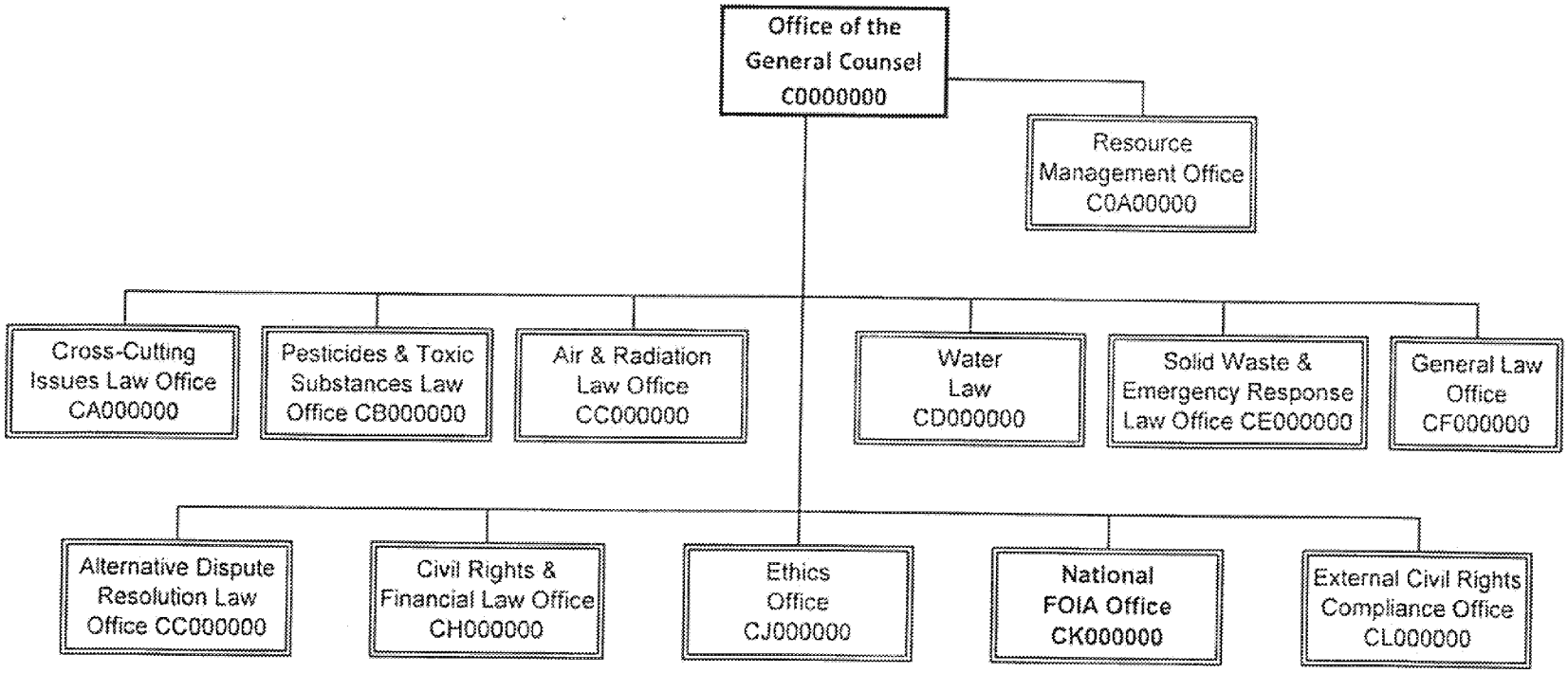
Hi Kevin –

Would you all please send me an email update on the progress of the transition of FOIA to OGC? Please let me know the timeline and what issues are in the process of being resolved in order to effectuate the transition.

Thanks,

Marcella Burke
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460
(202) 564-1609
burke.marcella@epa.gov

Proposed Organizational Structure
Office of the General Counsel Management



1:19-CV-05190 4.1.2022 ED_003046_00003700-00001

Draft Content for National FOIA Office Intranet Home Page

Ex. 5 Deliberative Process (DP)

Draft Content for National FOIA Office Intranet Home Page

Ex. 5 Deliberative Process (DP)

Draft Content for National FOIA Office Intranet Home Page

Ex. 5 Deliberative Process (DP)

Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 6/19/2019 8:59:59 PM
To: Grantham, Nancy [Grantham.Nancy@epa.gov]; Schiermeyer, Corry [schiermeyer.corry@epa.gov]
Subject: RE: FOIA draft statement and mass mailer
Attachments: DRAFT Messaging for FOIA Regulations Update (06.11.2019).docx; DRAFT Desk Statement for FOIA Regulations Update (06.11.2019).docx

We need a description of what the three changes are that we are making per updating EPA's FOIA regs based on what Congress has passed. I think a more thorough description is necessary so that the worst isn't assumed. I think we also need to explain the difference between past and present with the National FOIA Office. That's not a new office here and it would make one think that's being created under these new rules. This needs to be worked out more because a lack of information will assume the worst.

From: Grantham, Nancy
Sent: Wednesday, June 19, 2019 4:54 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: FOIA draft statement and mass mailer

Ryan,

Please see attached draft press statement and mass mailer on the foia regs. I had asked them to consider your comments on 6/14 and update the statement – I am checking on that.

Thanks ng

From: Epp, Timothy
Sent: Friday, June 14, 2019 12:55 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: draft GC email re Regs

Hi Nancy, I've attached the text of a draft email that Matt could send to all EPA staff announcing the regulations. He has not yet reviewed. I'd welcome your review and comments.

Some questions for you to consider: Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks

Timothy R. Epp
|National FOIA Office
U.S. Environmental Protection Agency | Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC 2310A)
Washington, D.C. 20460 | WJCN 7309B
Phone (202) 564-2830| epp.timothy@epa.gov

National FOIA Office
EPA Office of General Counsel

Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 6/25/2019 6:11:51 PM
To: Abboud, Michael [abboud.michael@epa.gov]
CC: Schiermeyer, Corry [schiermeyer.corry@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]; Konkus, John [konkus.john@epa.gov]
Subject: Re: The Hill Falsely Reports On EPA's New FOIA Regulation - Preview

Nice.

Ryan Jackson
Chief of Staff
U.S. EPA
202-564-6999

On Jun 25, 2019, at 1:10 PM, Abboud, Michael <abboud.michael@epa.gov> wrote:

> It's out.
>
> Sent from my iPhone
>
> On Jun 25, 2019, at 2:10 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:
>
>> Sent?
>
>> Ryan Jackson
>> Chief of Staff
>> U.S. EPA
>> 202-564-6999
>
>> On Jun 25, 2019, at 12:49 PM, Schiermeyer, Corry <schiermeyer.corry@epa.gov> wrote:
>
>> > Agree. Thank you
>> >
>> > Sent from my iPhone
>
>> > On Jun 25, 2019, at 12:44 PM, Abboud, Michael <abboud.michael@epa.gov> wrote:

Corry one other addition, we want to include that have asked for a retraction.

From: EPA Press Office <press@epa.gov>
Sent: Tuesday, June 25, 2019 1:44 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: The Hill Falsely Reports On EPA's New FOIA Regulation - Preview

U.S. ENVIRONMENTAL PROTECTION AGENCY

FACT CHECK

WWW.EPA.GOV/NEWSROOM

The Hill Gets It Wrong On New EPA FOIA Regulation

EPA has finalized a new regulation which will bring the Agency into compliance Congressional amendments to FOIA from 2007, 2009, and 2016. Congress provic federal departments and agencies until the end of 2016 to update their FOIA regulations, the Obama administration failed to meet this deadline.

The Hill used a false premise and ran a grossly inaccurate story explaining the regulation. EPA has asked for a retraction.

THE HILL'S FALSE HEADLINE

New EPA rule would expand Trum officials' powers to reject FOIA requests

BY MIRANDA GREEN - 06/25/19 08:50 AM EDT

The headline above is false, EPA is not "expanding" political appointees power down FOIA requests.

What the Agency has done with this new rule is simply restated in a single plac
the political and career Agency officials who are authorized to issue determina
under the FOIA statute. The 2002 regulation was ambiguous in its description o
held this authority previously, and the 2019 regulation will provide clarity.

THE HILL'S FALSE QUOTES

The 2019 regulation does not grant any additional authorities such as the abilit
"reject" FOIA requests by claiming "no records." A response that yields "no re
simply a request in which a search has been conducted and no responsive reco
found, it is a frequent determination that has existed since the passage of the
has been available to any official authorized to issue FOIA determinations. This
regulation brings EPA into compliance with the law, which the previous admini
failed to do.

MORE OF THE HILL'S FALSE QUOTES

According to the new language in the FOIA rule signed by EPA chief Andrew Wheeler last week, the administrator and other officials would be allowed to materials that fit a FOIA request criteria, known as responsive documents, a decide "whether to release or withhold a record or a portion of a record on th responsiveness or under one or more exemptions under the FOIA, and to is records' responses."

THIS IS NOT NEW.

At all federal departments and agencies this has been the case since the passag FOIA, all of these options are available for every request that comes into the A

AND MORE FALSE REPORTING FROM THE HILL

A "no records" response would allow records seekers to be told there are no doc meeting their search criteria, even if they were found but withheld by the politica appointees.

The blanket explanation for non-responsive materials may also make it harder fo or individuals to legally challenge any of EPA's decisions to withhold documents because it will be more difficult to prove they were withheld unlawfully. A person appealing their FOIA response would not know if any documents were withheld "no records" response.

THIS IS COMPLETELY FALSE.

EPA's regulations cannot change federal statute. When an Agency discovers res documents they are released, in accordance with the law. EPA will continue to interpret the FOIA regulations in accordance with the statute and the courts.

<!--[if !vml]--><image001.png><!--[endif]-->

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U.S. Environmental Protection Agency
1200 Pennsylvania Avenue Northwest
Washington, D.C. 20004

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Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 11/9/2018 4:29:10 PM
To: Andrew Wheeler (adm15.arwheeler.email@epa.gov) [adm15.arwheeler.email@epa.gov]
Subject: Final FOIA Memo - Clean 11 5 2018.docx
Attachments: Final FOIA Memo - Clean 11 5 2018.docx

Also, are you ok with this memo being circulated Tuesday under your signature? I have been advised that this is ready to go and that you approve. However, many make assumptions which may not be true so I'm checking.

Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 7/25/2018 3:47:21 PM
To: Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]; Brown, Byron [brown.byron@epa.gov]
Subject: fish bowl
Attachments: Wheeler Fishbowl Memo draft 072518 RJ.docx; Thomas Fishbowl Memo 1985.pdf; Charts of Fishbowl Memo Differences.docx; Crosswalk EPA's Fishbowl Memos wth 2017 comparison.docx; Jackson Fishbowl Memo 2009.pdf; Reilly Fishbowl Memo 1989.pdf; Ruckelshaus Fishbowl Memo 1983.pdf

Attached is a draft Wheeler Fishbowl Memo.

Attached is also comparisons among similar memos from Ruckelshaus, Thomas, Reilly, and Jackson along with their actual memos.

Could OPA staff and Byron review the Wheeler memo with the usual scrub down for tone, presentation, etc?

Could OGC staff and Byron review the Wheeler memo with a legal scrub highlighting comparisons with previous memos, necessary updates, and other considerations which may change or include in the Wheeler draft?

Ultimately, I would like to present Andrew with a draft and the previous versions as early as tomorrow. Maybe the fishbowl memo could be the first memo he releases, and it could be released this week.

Thank you.

Ryan Jackson
Chief of Staff
U.S. Environmental Protection Agency
(202) 564-6999

Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 7/26/2018 1:44:47 PM
To: Leopold, Matt (OGC) [Leopold.Matt@epa.gov]
CC: Brown, Byron [brown.byron@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]
Subject: to make it easier
Attachments: Wheeler Fishbowl Memo draft 072518 RJ_OPA_BB.DOCX; Jackson Fishbowl Memo 2009.pdf; Reilly Fishbowl Memo 1989.pdf; Ruckelshaus Fishbowl Memo 1983.pdf; Thomas Fishbowl Memo 1985.pdf; Charts of Fishbowl Memo Differences.docx; Crosswalk EPA's Fishbowl Memos wth 2017 comparison.docx

Attached is the latest Fishbowl I would like for OGC to directly edit. This allows me to, of course ultimately, accept all changes.

Additionally, attached are the historical fishbowl memos and OGC notes.

Finally, the EEO packet I emailed yesterday remains the same and I'll approach Andrew about it after Fishbowl.

Thanks.

Ryan Jackson
Chief of Staff
U.S. Environmental Protection Agency
(202) 564-6999

Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 7/15/2018 11:45:56 PM
To: michal_freedhoff@epw.senate.gov
Subject: Letter to Ranking Member Elijah E. Cummings Regarding EPA's FOIA Expert Assistance Team.Final.pdf
Attachments: Letter to Ranking Member Elijah E. Cummings Regarding EPA's FOIA Expert Assistance Team.Final.pdf; ATT00001.txt

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

July 15, 2018

The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Ranking Member Cummings:

In a letter from you in your capacity as the Ranking Member of the Committee on Oversight and Government Reform (Committee) to the Honorable Trey Gowdy, Chairman of the Committee, you raised questions regarding the Environmental Protection Agency's (EPA's) process for responding to Freedom of Information Act (FOIA) requests. The letter highlighted the role of EPA's FOIA Expert Assistance Team (FEAT) in that process. I write to provide information as to the origin and role of the FEAT, and to offer to brief Committee staff on the same.

In 2013, EPA's FOIA program was routinely the subject of litigation, public criticism, and Congressional oversight (including oversight by this Committee). Then-Acting Administrator of EPA Robert Perciasepe turned to me and my counterpart in the Office of Environmental Information and gave us the following task: make the FOIA process at EPA better. In response, the FOIA Expert Assistance Team, affectionately known as the FEAT, was created. The purpose of the FEAT was to provide strategic direction and project management assistance on the most challenging or complex FOIA requests. Here is how the FEAT was described in its original Functional Statement:

> Under the supervision of the Senior Counsel, this unit provides legal counsel on all issues pertaining to selected FOIA requests that have been determined to be [the] most complex and/or potentially sensitive requests received across the Agency. Utilizing an extraordinary breadth of FOIA knowledge and experience, together with in-depth organizational and external awareness, the team provides advice and guidance to the highest echelons of management within the Agency.

Throughout its history, there have been three ways a FOIA request became a "FEAT FOIA": a request from the lead office, a request from the Office of the Administrator, and an independent decision by the FEAT Director. The FEAT would engage on approximately 3% of EPA's FOIA requests each year, with the level of engagement on each request adjusting to the specific needs presented by that request. Among the first FEAT "deployments" – where DC-based experts travel to locations across the agency to help lead a response to a FOIA request – was the Team's engagement with EPA's Region 10 in response to requests related to Bristol Bay, Alaska. Other major "FEAT FOIAs" include requests related to the spill of polluted water from Gold King Mine, EPA's response to Volkswagen's use of defeat devices, and drinking water contamination in Flint, Michigan.

In addition to work on specific FOIA requests, the FEAT also helped keep senior leaders informed of new requests that the agency received each week, coordinated inter-agency review with the Executive Office of the President (EOP) where the EOP had equities in the responsive documents, and made senior leaders aware of impending FOIA productions. There are multiple benefits to making senior leaders – political and career – aware of productions before they are actually produced: the Office of Congressional and Intergovernmental Affairs can determine if the documents are also responsive to a Congressional request for information and, if so, ensure Congress receives the documents at the same time or slightly before the requestor; the Office of Public Affairs can prepare any communications materials deemed necessary based on the documents to be produced; when the documents are from or about a particular employee, keeping that employee informed throughout the process when appropriate, including at the response stage, can significantly increase their confidence in and respect for the FOIA Program into the future; and, while not meant as a quality control tool, to the extent a mistake is identified, it can be corrected. This "awareness review" process does not itself violate FOIA and can be completed without causing undue delay.

In early 2017, the FEAT began to take on a new responsibility: providing programmatic training and support to an office that was struggling to meet its FOIA responsibilities. FEAT members were "embedded" with OGC's External Civil Rights Compliance Office and OGC's Ethics Office to help those offices gain experience and confidence in their FOIA abilities. Based in part on that experience, EPA Chief of Staff Ryan Jackson asked the FEAT to assist the Administrator's Office (AO) in improving its FOIA program. The AO had seen a 415% increase in the number of incoming FOIA requests compared to 2016 and the volume had overwhelmed the small staff that was designated to respond to such requests. The AO Centralization Pilot Project was designed to see if the FEAT could "deploy" to an office within EPA, assess the strengths and weaknesses of the office's current FOIA program, and build a consolidated cadre of employees who would be focused exclusively on FOIA and other information requests. The expectation was that by centralizing and prioritizing the responsibility for FOIA requests, the office would produce more timely responses with fewer errors that necessitated less resources.

After multiple lean events and prototype exercises, the FEAT and representatives from the AO Immediate Office (OEX), the Office of Public Affairs (OPA), the Office of Policy (OP) and the Office of Congressional and Intergovernmental Relations (OCIR) (collectively referred to as AO4) began to implement the AO FOIA Centralization Pilot Project on April 31, 2018. With the support of the Chief of Staff, the FEAT hired three new employees to support this effort, and AO4 offices recruited new information experts as well. Currently, the FEAT is coordinating the centralized FOIA efforts for the 1,453 FOIA requests pending with the AO4 offices (as of June 18, 2018).

Through the Pilot Project, the FEAT and the AO4 Offices have built a foundation for a dramatically improved FOIA program. The team painstakingly categorized 1,442 requests and assigned a project lead for each. There was no existing categorization scheme for the team to turn to, so as they reviewed the requests they developed a unique taxonomy for classifying all existing and incoming requests. They also began the practice of stamping each document processed as part of the pilot with a unique identifier so that every document can be tracked at all stages of the response process.

These behind the scenes efforts enabled two key advancements that generated tangible results for requestors. First, on June 6, 2018, every one of the 1,163 requestors with a request pending in the AO4 received an update on their specific request that included a tracking number, where the request currently stood in the que of pending requests, and an estimated response date. Many of those dates were months into the future, and so the letters offered the assistance of EPA's FOIA Public Liaison and the Office of Government Information Services, and committed to providing interim releases, if possible. That commitment is meaningful, because the second advancement is that release to one requestor now means release to all. The agency often receives multiple requests for the same information. Because the team has now identified every pending request as relating to one or more standardized subject areas, and because when the team reviews a document it also identifies that document as relating to one or more of the same standardized subject areas, the team can instantly identify all pending requests to which a document is responsive and send the production to each of those requestors as well. That innovation alone has incredible potential to reduce the time it takes the AO to respond to requests. While much more progress must be made, since implementation, the team has completed its response to 100 requests and provided interim responses to 341 additional requests.

EPA's FOIA program is far from perfect. The number of requests that are pending for more than the statutory or agreed upon time for responding has increased. As a result, EPA now faces over 70 lawsuits under FOIA – a 500% increase over the pre-2017 high. Ultimately, the head of an agency sets the tone and the commitment of EPA's senior leaders will be essential for the program to improve. The work of the FEAT and the AO4 Team, however, has laid a foundation from which EPA's FOIA program could be a model of what a FOIA program should be, not an example of what a FOIA program should not be. I invite you, other members of the Committee, and Committee staff to visit our offices to see first-

hand the effort that is being made and the work that has been done to put the agency on the cusp of that future. If you have further questions or would like to schedule a briefing, you may contact me at minoli.kevin@epa.gov or (202) 564-8064, or your staff may contact Neil Bigioni, Acting Director, National FOIA Office, at bigioni.neil@epa.gov or (202) 564-2281, or Kristien Knapp, Office of Congressional and Intergovernmental Relations at knapp.kristien@epa.gov or (202) 564-3277.

Sincerely,

Kevin S. Minoli
Principal Deputy General Counsel &
Designated Agency Ethics Official

cc: The Honorable Trey Gowdy
Chairman, Committee on Oversight and Government Reform

Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 7/15/2018 11:20:03 PM
To: luke_holland@inhofe.senate.gov
Subject: Letter to Ranking Member Elijah E. Cummings Regarding EPA's FOIA Expert Assistance Team.Final.pdf
Attachments: Letter to Ranking Member Elijah E. Cummings Regarding EPA's FOIA Expert Assistance Team.Final.pdf; ATT00001.txt

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

July 15, 2018

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Ranking Member
Committee on Oversight and Government Reform
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Sincerely,

Kevin S. Minoli
Principal Deputy General Counsel &
Designated Agency Ethics Official

cc: The Honorable Trey Gowdy
Chairman, Committee on Oversight and Government Reform

Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 7/15/2018 11:19:08 PM
To: richard_russell@epw.senate.gov
Subject: Letter to Ranking Member Elijah E. Cummings Regarding EPA's FOIA Expert Assistance Team.Final.pdf
Attachments: Letter to Ranking Member Elijah E. Cummings Regarding EPA's FOIA Expert Assistance Team.Final.pdf; ATT00001.txt

AO4 CENTRALIZATION PILOT PROJECT

Background

- Chief of Staff Ryan Jackson asked OGC to assist the Administrator's Office responding to a 415% increase in the number of FOIA requests compared to 2016.
- OGC hired three additional attorneys and deployed a total of 4 members of OGC's National FOIA Office FOIA Expert Assistance Team (FEAT) to the Administrator's Office for the Pilot
- Expectation was that by centralizing and prioritizing the responsibility for FOIA requests, the office would produce more timely responses with fewer errors and with less resources.
- After multiple lean events and prototype exercises, the FEAT and representatives from the AO Immediate Office (OEX), the Office of Public Affairs (OPA), the Office of Policy (OP) and the Office of Congressional and Intergovernmental Relations (OCIR) (collectively referred to as AO4) began to implement the AO FOIA Centralization Pilot Project on April 30, 2018.

Accomplishments to Date

- The two Lean events resulted in a successful new centralized process for all four offices.
- On June 6, 2018, 1300+ requests then pending received an update that included a tracking number, where the request currently stood in the queue of pending requests, an agency contact, and an estimated response date.
- All existing and incoming requests are categorized in a newly developed standard taxonomy and each subject category has been assigned an AO4 staff member as the Project Lead for that category of requests.
- Each document processed is now stamped with a unique identifier so that every document can be tracked at all stages of the response process.
- Because the team has now identified every pending request as relating to one or more standardized categories, the team can quickly identify other pending requests to which a document production is responsive and send responsive productions to each of those requestors as well.
- Categorization and tracking has incredible potential to reduce the time it takes the AO to respond to requests. While much more progress must be made, since implementation, the team has completed its response to 124 requests and provided interim responses to 341 additional requests between April 30 and July 27, 2018.

Next Steps

- Project Leads are analyzing the FOIA requests in the category assigned to him/her. The Project lead will identify oldest requests, identify similar requests, identify interim responses that can be provided from previous releases, identify requests that can be

closed, clarify or narrow requests as needed, and develop searches to be sent to OEI Discovery Services for search and collection.

- EPA will assign 10-12 additional AO staff beginning no later than [date to be determined by OEX] and immediately begin training the new staff on Relativity and the review process using the 25,000 AO records currently ready for review (Beachhead Team and Transition Team document collections).
- Need to develop: plan for second level document review, final decision on whether to construct one or more Relativity workspaces to manage project, and long-term plan to turn over AO4 project management to OEX.

FOIA PROPOSED BEST PRACTICES

It is important to the Agency's mission to increase the quality, pace and professionalism of the EPA's national FOIA processes. EPA took a major step toward achieving these goals with a multi-day Kaizen event held in February 2018. That Kaizen event resulted in two pilot projects that the National FOIA Office (NFO) has led in conjunction with the Office of Continuous Improvement (OCI). One pilot that has focused on decreasing the time it takes to decide expedited processing and fee waiver requests is expected to get FOIA requests into the hands of the responding office more quickly. The second pilot is examining the workflow within the offices that process FOIA responses, determining if appropriate resources are being provided to the FOIA response effort, and identifying bottlenecks around which the NFO expects to hold additional Kaizen events to find creative ways to improve the currently decentralized EPA FOIA response process. These pilots may also help identify tools and opportunities for the National FOIA Office to provide training and assistance to responding offices that will help them move forward to achieve those goals. Additionally, the data being generated from these projects may indicate additional or different problems or approaches to solutions than set forth below. The practices described below should therefore be considered to be "best" only as an interim step to achieving the comprehensive overhaul of the Agency's FOIA response process.

Demonstrate EPA's Commitment to Transparency Through Accountability

- All FOIA professional staff within a Region or National Program should report to a senior level supervisor (GS 14 or 15), who in turn should report directly to an SES level supervisor. The SES level supervisor will be responsible for: ensuring that the staff comply with all applicable laws, regulations, and applicable Agency policies and guidance, developing, and ensuring compliance with, local FOIA policies and guidance, and ensuring that the office maintains adequate staffing to run the program at a professional level.

- All offices that process FOIA will implement the visual management tools for tracking FOIA processing developed or being developed by the NFO and the OCI. As a component of the visual management tool, the office shall track the number of FOIAs responded to on time, the number of FOIA responses appealed, and whether the appeal is granted or denied in whole or part. This information shall be reported to the NFO on a periodic basis, no less frequently than monthly.

- All persons (staff and managers) with FOIA responsibilities should be made accountable for those responsibilities by having specific provisions in their performance agreements.

Continued Development of a Skilled Corps of FOIA Professionals

- New FOIA staff should be hired as Government Information Specialists (GIS), Series 306. Management should examine whether existing FOIA staff should be reclassified to this job series. This series was specifically created to include positions responsible for

administering, analyzing, supervising, or performing work involved in establishing, disseminating or managing Government information. Government Information Specialists can formulate policy, advise agency management, and ensure compliance with Federal laws governing the flow of information. The work also involves the safeguarding of Government information while supporting accountability and transparency.

- The NFO and the General Law Office (GLO) will strive to make available in-person FOIA raining in all regions and national programs for managers and supervisors that oversee any aspect of the Agency's FOIA response. This training is the planned follow-on to training NFO FEAT and the GLO provided to first level FOIA professionals in the fall of 2017.

- The NFO and GLO will begin developing training for all FOIA Officers and Coordinators, who will be expected to complete this standardized, possibly web-based, training before being appointed to those positions (or, if appointed on an emergency or interim basis, complete the training within two weeks of their appointment).

- Dedicated funding for regular annual national FOIA conference.

Support and Promote Technology

The NFO and GLO, in conjunction with OEI Discovery services, shall develop standardized Relativity training to enhance competency in the new Relativity 9.5 review platform that was deployed on July 9 by OEI Discovery Services. Any training would include new Relativity analytics features, which are anticipated to be deployed in January 2019, as well as use of standard QA/QC protocols.to identify certain standard types of PII.

Apply EPA FOIA Procedures and Policies Consistently Across the Agency

- All programs shall be required to conduct defensible searches for responsive documents using the Agency's established procedures, including use of the OEI centralized search of Outlook emails, where appropriate. See http://intranet.epa.gov/foia/MS-Outlook-Email-Search.html.

- All programs should refer to the FOIA Toolkit when responding to FOIAs. The Toolkit follows the lifecycle of a FOIA and provides important best practices for efficient FOIA processing.

- The Agency should amend its FOIA regulations to centralize all FOIA intake within the NFO. Regulations should also be amended to give direction to responding offices after a FOIA appeal has been remanded (where the FOIA will go in the queue, time frame to act). Until the FOIA regulations are amended, program offices should develop local

procedures for handling remanded FOIA appeals to ensure efficient processing of the remanded FOIAs.

FOIA LITIGATION

General Overview

- A FOIA requester can file suit in federal court if: (1) after exhausting its administrative appeal rights, it alleges the agency improperly withheld records, or (2) the agency failed to respond to the FOIA request within the statutory time-frame (known as "failure to respond" cases).

- The Agency currently has 68 FOIA cases pending, which is more than triple the highest number of cases pending between 2013-2015, the Agency's previous highwater mark for FOIA litigation. Over 80 percent of the pending cases are failure to respond cases.

- The majority of litigation stems from FOIAs assigned to: (1) the Office of the Administrator (AO) (35 cases); (2) the Office of Pesticides Programs (7 cases); and (3) the Office of Administration Resources Management (7 cases).

- Topics at issue in the AO FOIAs include: Calendar/Call logs; Travel; Ethics; Climate Change; Waters of United States; Superfund; Contracts; and Grants.

Strategies Being Employed to Address Current Caseload

- Given the over three-fold increase in FOIA litigation, the General Law Office has had to secure additional resources from other law offices to cover the case load. To date, we have utilized over 12 attorneys from other law offices, collectively constituting over two full-time FTE from other law offices.

- Recently, we secured additional attorney volunteers from Offices of Regional Counsel, who will be helping to handle the pending cases. We are also in the process of hiring four additional attorneys in the General Law Office, two of whom will handle general information law issues, including FOIA litigation, and two of whom will provide legal counseling work related to implementation of the 2016 amendments to the Toxic Substances Control Act.

- We are in the process of adding an additional Assistant General Counsel position in the General Law Office on a temporary basis to assist with, among other things, the management of FOIA litigation. Having two managers responsible for the burgeoning FOIA caseload will ensure that we have sufficient management coverage of the cases.

- We are also working closely with the Civil Division at the Department of Justice and the United States Attorney's Office in Washington, D.C., raising issues of improper requests to the highest levels of the organization.

General Case Strategies

- We carefully review all FOIA requests in litigation, making improper request arguments where the facts support such an argument.

- We continue to employ case strategies to narrow issues in litigation.

    - For example, once a production is complete in a failure to respond case, we work with the plaintiff to attempt to narrow the documents at issue in the case. Often, after some discussion regarding the basis for the Agency's withholdings, we can resolve the case without further litigation over the propriety of the withholdings.

- We are working to provide interim releases to FOIA litigants where the FOIA at issue concerns a subject matter to which we have previously responded under FOIA.

- We are working to set up meetings with institutional litigants (*i.e.*, those with several cases pending) and discuss prioritizing the litigants' FOIA requests, narrowing issues, and attempting to secure agreement on reasonable production schedules.

- In a failure to respond case, we work to identify a mutually agreeable production schedule with consent from the program office; agreeing to a production schedule avoids the court issuing an aggressive schedule that the agency cannot meet. We recognize that OEX has been significantly overburdened with FOIA requests and FOIA litigation. The General Law Office is working in close coordination with the Director of OEX and OEX staff to develop production schedules and ensure that there are sufficient resources to meet such schedules. If the parties cannot reach agreement on a schedule, the parties will brief the issue to the court.

- Finally, we are in the process of conducting a comprehensive evaluation of our cases to determine whether settlement would be in the best interest of the Agency. Where in the best interest of the government, we will work to resolve the cases, either by agreeing to make a discretionary release of a previously withheld document and/or paying attorney's fees where the plaintiff can show eligibility and entitlement.

Message

From: Konkus, John [konkus.john@epa.gov]
Sent: 11/28/2018 11:19:22 AM
To: Jackson, Ryan [jackson.ryan@epa.gov]; Abboud, Michael [abboud.michael@epa.gov]
Subject: Fwd: EPA memo on FOIA "awareness reviews"
Attachments: 13-1.pdf; ATT00001.htm

We should give him the letter to Members and emails from the prior administration.

Begin forwarded message:

Resent-From: <Press@epa.gov>
From: Kevin Bogardus <kbogardus@eenews.net>
Date: November 27, 2018 at 11:58:29 PM EST
To: "Konkus, John" <konkus.john@epa.gov>, "Abboud, Michael" <abboud.michael@epa.gov>, "Hewitt, James" <hewitt.james@epa.gov>, "Block, Molly" <block.molly@epa.gov>, Press <Press@epa.gov>
Subject: EPA memo on FOIA "awareness reviews"

Hey everyone,

It's Kevin Bogardus with E&E News. My apologies for the late night email. I will check in again tomorrow morning.

I'm working on a story about EPA Chief of Staff Ryan Jackson's memo on the agency's use "awareness reviews" for its Freedom of Information Act responses, which EPA disclosed in a court filing (please see attached). Under Jackson's memo, there will be guidelines for awareness reviews, including only allowing EPA political appointees days to review records before they are released to the public.

I don't have any questions for you but I wanted to give you a heads up about my story. That said, if you do want to share any thoughts, please let me know.

Also, since I will be out and about tomorrow morning, please do not call me but email me your thoughts about this memo.

Please get back to me as soon as possible. My deadline is noon EST Wednesday, Nov. 28, but the sooner you get back to me, the more it helps my reporting. Thank you for your help.

Kevin Bogardus
E&E News Reporter
kbogardus@eenews.net
202-446-0401 (p)
202-247-7844 (c)
202-737-5299 (f)

Follow me @KevinBogardus

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EnergyWire, ClimateWire, E&E Daily, Greenwire, E&ENews PM, E&ETV

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

November 16, 2018

OFFICE OF THE
ADMINISTRATOR

MEMORANDUM

SUBJECT: Awareness Notification Process for Select Freedom of Information Act Releases

FROM: Ryan Jackson
Chief of Staff

TO: General Counsel
Assistant Administrators
Inspector General
Chief Financial Officer
Associate Administrators
Regional Administrators
Regional Counsels
Deputy Regional Counsels
FOIA Coordinators

Earlier this week, in a November 13, 2018, memorandum to all staff, Acting Administrator Wheeler reaffirmed the agency's commitment to transparency, noting that the Freedom of Information Act is both a statutory obligation and an important tool for promoting transparency and building public trust in agency actions.

For years, spanning several Administrations, senior leaders at the U.S. Environmental Protection Agency have been notified of the imminent release of information through FOIA. This "awareness notification process" is intended to inform senior officials of the release of information through FOIA that may be of particular interest to the press, the public and/or Congress. Indeed, having such awareness has allowed agency senior leadership to respond efficiently to inquiries about such releases. In an effort to ensure consistency and provide clarity, this memorandum sets forth the awareness notification process to be followed at the agency.

This awareness notification process is not an approval process, nor does this process alter or eliminate any part of the agency's existing procedures for collecting, reviewing or redacting documents, or preparing responses to FOIA requests. Consistent with the agency's FOIA policy and procedures, FOIA staff, program staff and program managers will continue to determine whether information should be released or withheld under FOIA's exemptions. The awareness notification process described below is effective immediately and controls and supersedes any prior process, procedure, guidance or instruction, either formal or informal, to the extent such is

inconsistent with the awareness notification process described below. The aspects of the awareness notification process described in paragraphs 1 through 3 below will run concurrently with the Action Office's[1] preparation of the FOIA response.

PROCESS

1. The National FOIA Office will provide a list of select FOIA requests received that week to the Director of the Office of Executive Secretariat, the Associate Administrator for the Office of Public Affairs and the Associate Administrator for the Office of Congressional and Intergovernmental Relations, with a courtesy copy to the deputy in each of those three offices.

2. As promptly as possible but within five business days of transmittal of the list, the OEX Director and the OPA and OCIR Associate Administrators, or their designees, will notify the National FOIA Office Director, or designee, identifying any specific FOIA requests for which they would like to receive an awareness notification.

3. For those FOIA requests identified for awareness notification, the National FOIA Office Director or Assistant Directors, or their designees, will promptly indicate in FOIAonline that the FOIA response will require an awareness notification. The National FOIA Office Director, or designee, will also notify the Deputy Assistant Administrator or Deputy Regional Administrator of the Action Office by email, specifying which FOIAs have been identified for awareness notification.

4. Following Action Office management approval of the FOIA determination, in accordance with applicable authorities,[2] and prior to issuing the determination, the Action Office shall prepare an "awareness notification email" containing the following information:
   - The name of the Action Office;
   - The FOIAonline tracking number;
   - The name of the requester/organization;
   - The date the FOIA request was perfected;
   - A brief description of the request, as clarified/modified;
   - Whether the response is interim or final;
   - The number of documents and/or pages to be released;
   - An attachment of, or link to, the documents to be released;
   - A list of offices with an equity in the documents and a statement that those offices have reviewed the relevant documents; and
   - The name of the manager responsible for making the FOIA determination.

   A copy of the email will be saved in FOIAonline.

---

[1] The Action Office, as defined in EPA's Procedures for Responding to Freedom of Information Act Requests CIO 2157-P-01.1, is the organizational unit that has responsibility for responding to a FOIA request.

[2] *See* 5 U.S.C. § 552(a)(6)(A)(i), 40 C.F.R. §§ 2.103(b), 2.104(h), and EPA Delegation of Authority 1-30 Freedom of Information (12/15/2016); *see also* EPA Freedom of Information Act Policy CIO 2157.1 (09/30/2014) and EPA Procedures for Responding to Freedom of Information Act Requests CIO 2157-P-01.1 (09/30/2014).

5. The Action Office will send the "awareness notification email" to the OEX Director and Deputy Director, the National FOIA Office Director and Assistant Directors, the OPA and OCIR Associate Administrator and Deputy Associate Administrator, the Deputy Assistant Administrator or Deputy Regional Administrator of the Action Office and the individual assigned to the request in FOIAonline.

6. The recipients of the "awareness notification email" will have up to three business days following transmission of that email to review the documents to be released. There is no requirement for the recipients of the awareness notification email to respond or otherwise take action. After 4 p.m. on the third business day after transmission of the awareness notification email, the Action Office shall issue the Agency's FOIA determination. The determination should be issued promptly, but in no event later than one business day following completion of the three-day awareness notification period. After issuance, the determination should be properly documented in FOIAonline.

The awareness process discussed above does not affect the statutory timelines or, when applicable, litigation deadlines facing the agency.

As Acting Administrator Wheeler shared in his November 13, 2018, memorandum, 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.

cc: Andrew R. Wheeler
Henry Darwin

Message

From: DC-WJCN-3402-M@epa.gov [DC-WJCN-3402-M@epa.gov]
Sent: 11/16/2018 10:59:55 AM
To: Lyons, Troy [lyons.troy@epa.gov]; Abboud, Michael [abboud.michael@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; White, Elizabeth [white.elizabeth@epa.gov]
Subject: FOIA docs
Attachments: image2018-11-16-055955.pdf

cover letter; poliy; wachter emails

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

November 16, 2018

The Honorable John Barrasso
Chairman
Committee on Environment &
Public Works
U.S. Senate
Washington, D.C. 20515

The Honorable Tom Carper
Ranking Members
Committee on Environment &
Public Works
U.S. Senate
Washington, D.C. 20515

The Honorable Greg Walden
Chairman
Committee on Energy & Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Frank Pallone
Ranking Member
Committee of Energy & Commerce
U.S. House of Representatives
Washington, D.C. 2015

The Honorable Trey Gowdy
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Elijah Cummings
Ranking Members
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairmen Barrasso, Walden, Gowdy, and Ranking Members Carper, Pallone, and Cummings:

Several of your committees have previously expressed interest in the U.S. Environmental Protection Agency's (EPA) processing of Freedom of Information Act (FOIA) requests. The EPA has long been committed to operating in an open and transparent manner, and we have recently undertaken actions to strengthen that commitment. In the spirit of transparency, the purpose of this letter is to bring to your attention a FOIA document production on this specific topic.

On November 13, 2018, Acting Administrator Andrew Wheeler reaffirmed the agency's commitment to transparency in a memorandum titled "The Freedom of Information Act (FOIA): An Important Tool for Promoting Transparency and Building Public Trust in Agency Actions" (copy enclosed). The memorandum details important steps the agency has taken to strengthen its FOIA program and details our goals for improvement:

- Transparency – People have the right to access agency records, unless the information is statutorily protected from disclosure.

- Timeliness – The EPA should take less time to provide FOIA responses.
- Quality – Our responses must be clearer regarding process and must ensure that records are appropriately redacted.
- Professionalism – The EPA will be a federal leader in promoting transparent, efficient and effective government.

We have also formalized an Awareness Notification Process for some FOIA requests (copy enclosed). The process will ensure that senior agency officials are informed about upcoming releases of information through the FOIA and ensure the information provided is accurate, consistent, and comprehensive. It is important to note that nothing in this process will delay the processing of FOIA requests, nor will it inhibit the public's access to information as provided for in the FOIA statute and its amendments.

Awareness notification has long been a standard procedure, not just at the EPA but throughout the federal government. It should be tacitly understood that for senior officials to effectively meet their responsibilities, they need to know when information of significant interest will be released to the public. If the press calls for comment or a Member of Congress has a question about records contained in a release, common sense tells us that the senior official fielding that inquiry needs to know what has been released.

Enclosed are records that the EPA has produced in response to a FOIA request about our awareness notification procedures that illustrate how the process has operated during the current administration. Also enclosed is a sample of records from the previous administration that provide insight into their awareness notification procedures. As you can see, awareness notification is not new and is, in fact, necessary for efficient and effective agency operations.

This Agency takes transparency seriously, and in keeping with our commitment to transparency, the Agency plans to produce to your committees an additional document production early next month.

There is no question that the EPA has been faced with tremendous challenges in responding to unprecedented increases in FOIA requests, but we are working hard to improve our processes and are dedicating tremendous resources to help ensure that our records are available, accessible, and appropriately redacted. Please let me know if you have questions about our legacy procedures or our new initiatives or if you would like to schedule a briefing.

Sincerely,

Troy M. Lyons
Associate Administrator

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

November 16, 2018

OFFICE OF THE
ADMINISTRATOR

MEMORANDUM

SUBJECT: Awareness Notification Process for Select Freedom of Information Act Releases

FROM: Ryan Jackson
Chief of Staff

TO: General Counsel
Assistant Administrators
Inspector General
Chief Financial Officer
Associate Administrators
Regional Administrators
Regional Counsels
Deputy Regional Counsels
FOIA Coordinators

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cc: Andrew R. Wheeler
Henry Darwin

Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 11/10/2015 6:28:49 PM
To: Farren, Victor [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b4e4ef4434e44bb488ab822e82780809-Farren, Vic]; Kelly, Lynn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=078d992839fc4a3f85689616b9030e72-Kelly, Lynn]
Subject: RE: 1343 final production - updated spreadsheet
Attachments: HQ-2013-001343.final.letter.Nov.10.docx

Attorney Client Privilege, Attorney Work Product / Ex. 5

From: Farren, Victor
Sent: Tuesday, November 10, 2015 11:05 AM
To: Kelly, Lynn <Kelly.Lynn@epa.gov>; Wachter, Eric <Wachter.Eric@epa.gov>
Cc: Hope, Brian <Hope.Brian@epa.gov>; Newton, Jonathan <Newton.Jonathan@epa.gov>
Subject: RE: 1343 final production - updated spreadsheet

Lynn,

Attorney Client Privilege, Attorney Work Product / Ex. 5

Regards,

Victor

From: Kelly, Lynn
Sent: Tuesday, November 10, 2015 10:57 AM
To: Farren, Victor <Farren.Victor@epa.gov>; Wachter, Eric <Wachter.Eric@epa.gov>
Cc: Hope, Brian <Hope.Brian@epa.gov>; Newton, Jonathan <Newton.Jonathan@epa.gov>
Subject: RE: 1343 final production - updated spreadsheet

Attorney Client Privilege, Attorney Work Product / Ex. 5

Lynn Kelly | US EPA | Office of General Counsel | 1200 Pennsylvania Ave., NW | WJC North, Mail Code 2377A | Washington DC 20460 | phone: (202) 564-3266

The contents of this e-mail and any attachments to it may contain deliberative-process, attorney-client, attorney work product, or otherwise privileged material. If you are not the intended recipient, or believe you have received this communication in error, please delete the copy you received, and do not print, copy, retransmit, disseminate, or otherwise use the information. Thank you.

From: Farren, Victor
Sent: Tuesday, November 10, 2015 10:32 AM

Cc: Hope, Brian <Hope.Brian@epa.gov>; Newton, Jonathan <Newton.Jonathan@epa.gov>
Subject: RE: 1343 final production - updated spreadsheet

Lynn,

Attorney Client Privilege, Attorney Work Product / Ex. 5

Please call me if you have any questions.

Victor Farren, Esq.
Contractor
U.S. Environmental Protection Agency
Office of the Executive Secretariat
(202) 564-5688
Farren.Victor@epa.gov

-----Original Message-----
From: Kelly, Lynn
Sent: Monday, November 09, 2015 12:25 PM
To: Farren, Victor <Farren.Victor@epa.gov>; Wachter, Eric <Wachter.Eric@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Miller, Kevin <Miller.Kevin@epa.gov>
Cc: Hope, Brian <Hope.Brian@epa.gov>; Newton, Jonathan <Newton.Jonathan@epa.gov>
Subject: RE: 1343 final production - updated spreadsheet

Attorney Client Privilege, Attorney Work Product / Ex. 5

Lynn Kelly | US EPA | Office of General Counsel | 1200 Pennsylvania Ave., NW | WJC North, Mail Code 2377A | Washington DC 20460 | phone: (202) 564-3266 The contents of this e-mail and any attachments to it may contain deliberative-process, attorney-client, attorney work product, or otherwise privileged material. If you are not the intended recipient, or believe you have received this communication in error, please delete the copy you received, and do not print, copy, retransmit, disseminate, or otherwise use the information. Thank you.

-----Original Message-----
From: Kelly, Lynn
Sent: Monday, November 09, 2015 12:08 PM

Attorney Client Privilege, Attorney Work Product / Ex. 5

Victor

-----Original Message-----
From: Kelly, Lynn
Sent: Friday, November 06, 2015 10:29 AM
To: Wachter, Eric <Wachter.Eric@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Miller, Kevin <Miller.Kevin@epa.gov>
Cc: Hope, Brian <Hope.Brian@epa.gov>; Newton, Jonathan <Newton.Jonathan@epa.gov>; Farren, Victor <Farren.Victor@epa.gov>
Subject: RE: 1343 final production

Eric,

Attorney Client Privilege, Attorney Work Product / Ex. 5

Lynn Kelly
Attorney-Advisor
General Law Office
Office of General Counsel
(202) 564-3266
Office # 7426C

From: Wachter, Eric
Sent: Friday, November 6, 2015 9:57 AM
To: Kelly, Lynn; Blake, Wendy; Miller, Kevin
Cc: Hope, Brian; Newton, Jonathan; Farren, Victor
Subject: RE: 1343 final production

Attorney Client Privilege, Attorney Work Product / Ex. 5

-----Original Message-----
From: Kelly, Lynn
Sent: Friday, November 06, 2015 9:50 AM

Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 2/26/2016 5:20:38 PM
To: Lasher, Diane [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ebfbc233c4784bde86e95f8cc80d4806-Lasher, Diane]; Martin, JohnC [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a07fd92774854f3882b78df7081e5bda-JMarti07]; Gottesman, Larry [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7b3dbf872f954fbeb950e98c56bdc431-LGottesm]
CC: Moser, Rebecca [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=43e2794f849243dfae064ab3f3bacf93-Moser, Rebecca]; Plastino, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2802f6d92e349c3b2e2a05232ac004e-MPlastin]; Leopard, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0c7e250715234083a7a99796d2543127-Leopard, Matthew]; Johnston, Robert [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b3bf5baf4ba45019526f3e342c46602-RJohns08]; Judd, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=025813a0ad0246518dd5722d3d40c78d-Judd, Jennifer]; Anouilh, Jeffrey [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f2acda2e94254455917615c6cb21dde8-Anouilh, Je]; Williams, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e7fbc22f39db45f3bb3103f25b44c8b6-Williams, Steven]; Juarez, Damon [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=454d92efe7d54db09ac3b5b7714fe71b-Juarez, Dam]; Reeder, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa56f6b0d507483fba530f3abbf6c94f-JREEDER]; Fritz, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0593db850724461799cb78eacbd5e461-Fritz, Matthew]; Caraballo, Mario [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=07e9d657e48042fea4bb7c68f78a023c-Caraballo, Mario]; Dunkin, Ann [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dbafda1254d74199ae86e5d28ebedd53-Dunkin, Ann]; Almodovar, Lisa [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a482f8be961a41eb8d149b40f7cb8f4b-LAlmod02]; Kling, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a684e1122c334eb4a997ea68597ba69b-Kling, David]
Subject: RE: FINAL UPDATE: Managing FOIA Interagency Referrals

My apologies. I thought I read that State had determined that these were NOT classified.

From: Lasher, Diane
Sent: Friday, February 26, 2016 12:18 PM
To: Martin, JohnC <Martin.JohnC@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>
Cc: Wachter, Eric <Wachter.Eric@epa.gov>; Moser, Rebecca <Moser.Rebecca@EPA.GOV>; Plastino, Michael <Plastino.Michael@epa.gov>; Leopard, Matthew <Leopard.Matthew@epa.gov>; Johnston, Robert <Johnston.Robert@epa.gov>; Judd, Jennifer <Judd.Jennifer@epa.gov>; Anouilh, Jeffrey <Anouilh.Jeffrey@epa.gov>; Williams, Steven <Williams.Steven@epa.gov>; Juarez, Damon <Juarez.Damon@epa.gov>; Reeder, John <Reeder.John@epa.gov>; Fritz, Matthew <Fritz.Matthew@epa.gov>; Caraballo, Mario <Caraballo.Mario@epa.gov>; Dunkin, Ann <Dunkin.Ann@epa.gov>; Almodovar, Lisa <Almodovar.Lisa@epa.gov>; Kling, David <Kling.Dave@epa.gov>
Subject: RE: FINAL UPDATE: Managing FOIA Interagency Referrals

John,

Office of Information Collection
Office of Environmental Information

202-566-2162 (Direct)
Personal Phone / Ex. 6
202-566-1667 (Main line)

From: Martin, JohnC
Sent: Friday, February 26, 2016 11:46 AM
To: Wachter, Eric <Wachter.Eric@epa.gov>
Cc: Moser, Rebecca <Moser.Rebecca@EPA.GOV>; Plastino, Michael <Plastino.Michael@epa.gov>; Leopard, Matthew <Leopard.Matthew@epa.gov>; Johnston, Robert <Johnston.Robert@epa.gov>; Judd, Jennifer <Judd.Jennifer@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>; Anouilh, Jeffrey <Anouilh.Jeffrey@epa.gov>; Williams, Steven <Williams.Steven@epa.gov>; Juarez, Damon <Juarez.Damon@epa.gov>; Reeder, John <Reeder.John@epa.gov>; Fritz, Matthew <Fritz.Matthew@epa.gov>; Caraballo, Mario <Caraballo.Mario@epa.gov>; Lasher, Diane <Lasher.Diane@epa.gov>; Dunkin, Ann <Dunkin.Ann@epa.gov>; Almodovar, Lisa <Almodovar.Lisa@epa.gov>; Kling, David <Kling.Dave@epa.gov>
Subject: Re: FINAL UPDATE: Managing FOIA Interagency Referrals

Please give Diane a call at 202-564-0059 or send her an email to arrange to review them. The ones we reviewed took less than an hour.

JM

John C. Martin
Intelligence Advisor/Special Agent
U.S. EPA - Office of the Administrator
Office of Homeland Security
202-564-2616 office
Personal Phone / Ex. 6

Exemptions 6 and 7(c)

On Feb 26, 2016, at 11:24 AM, Wachter, Eric <Wachter.Eric@epa.gov> wrote:

> These documents still need to go through OEX for FOIA review if they are AO records. Or was State requesting only a classification determination?
> Thank you.
>
> Eric E. Wachter
> Director, Office of the Executive Secretariat
> U.S. Environmental Protection Agency
> (202) 564-0507 office
> Personal Phone / Ex. 6
>
> **From:** Martin, JohnC
> **Sent:** Friday, February 26, 2016 10:45 AM

Rebecca

Rebecca Moser, Deputy Director
Office of Information Collection (OIC)
Office of Environmental Information (OEI)
U.S. Environmental Protection Agency

Mailing Address: 1200 Pennsylvania Avenue, NW (Mail Code 2821T), Washington, DC 20460
Physical Location: Room 6130B, William Jefferson Clinton West Building, 1301 Constitution Ave., NW, Washington, DC
Email: moser.rebecca@epa.gov
Direct Phone: 202-566-0252
Mobile Phone: Personal Phone / Ex. 6
Main Office Phone: 202-566-1630
Main Office Fax: 202-566-1624

From: Martin, JohnC
Sent: Friday, February 05, 2016 3:46 PM
To: Kling, David <Kling.Dave@epa.gov>; Moser, Rebecca <Moser.Rebecca@EPA.GOV>
Cc: Plastino, Michael <Plastino.Michael@epa.gov>; Leopard, Matthew <Leopard.Matthew@epa.gov>; Johnston, Robert <Johnston.Robert@epa.gov>; Judd, Jennifer <Judd.Jennifer@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>; Anouilh, Jeffrey <Anouilh.Jeffrey@epa.gov>; Williams, Steven <Williams.Steven@epa.gov>; Juarez, Damon <Juarez.Damon@epa.gov>; Reeder, John <Reeder.John@epa.gov>; Fritz, Matthew <Fritz.Matthew@epa.gov>; Caraballo, Mario <Caraballo.Mario@epa.gov>; Lasher, Diane <Lasher.Diane@epa.gov>; Dunkin, Ann <Dunkin.Ann@epa.gov>; Almodovar, Lisa <Almodovar.Lisa@epa.gov>
Subject: UPDATE: Managing FOIA Interagency Referrals

Diane has reviewed the documents. There were actually two separate deliveries to EPA. One via our unclassified email system and one couriered to us in hard copy. Out of an abundance of caution, State Department is asking us to treat the hard copy documents as classified SECRET until we can review them.

Diane Lasher has them in her possession and will lock them in her safe tonight after she is done reviewing them.

SMD and OHS will work together next week to make sure all NSI rules are followed and once the review is done, we will reply to State Department via SIPR if appropriate. We will keep OEI in the loop as well.

If you have any questions or need any additional information, please give me a call.

JM

John C. Martin
Intelligence Advisor/Special Agent
U.S. EPA - Office of the Administrator
Office of Homeland Security
202-564-2616 office

Cc: Plastino, Michael <Plastino.Michael@epa.gov>; Leopard, Matthew <Leopard.Matthew@epa.gov>; Johnston, Robert <Johnston.Robert@epa.gov>; Judd, Jennifer <Judd.Jennifer@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>; Anouilh, Jeffrey <Anouilh.Jeffrey@epa.gov>; Williams, Steven <Williams.Steven@epa.gov>; Juarez, Damon <Juarez.Damon@epa.gov>
Subject: RE: Managing FOIA Interagency Referrals

John,

Thank you again. We'll be back in touch again soon.

Rebecca

Rebecca Moser, Deputy Director
Office of Information Collection (OIC)
Office of Environmental Information (OEI)
U.S. Environmental Protection Agency

Mailing Address: 1200 Pennsylvania Avenue, NW (Mail Code 2821T), Washington, DC 20460
Physical Location: Room 6130B, William Jefferson Clinton West Building, 1301 Constitution Ave., NW, Washington, DC
Email: moser.rebecca@epa.gov
Direct Phone: 202-566-0252
Mobile Phone: Personal Phone / Ex. 6
Main Office Phone: 202-566-1630
Main Office Fax: 202-566-1624

From: Martin, JohnC
Sent: Friday, February 05, 2016 12:35 PM
To: Moser, Rebecca <Moser.Rebecca@EPA.GOV>
Cc: Plastino, Michael <Plastino.Michael@epa.gov>; Leopard, Matthew <Leopard.Matthew@epa.gov>; Johnston, Robert <Johnston.Robert@epa.gov>; Judd, Jennifer <Judd.Jennifer@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>; Anouilh, Jeffrey <Anouilh.Jeffrey@epa.gov>; Williams, Steven <Williams.Steven@epa.gov>; Juarez, Damon <Juarez.Damon@epa.gov>
Subject: Re: Managing FOIA Interagency Referrals

No problem. We are happy to help. Please feel free to give State my SIPR or JWICS addresses below. Those are used on the classified systems.

JM

John C. Martin
Intelligence Advisor/Special Agent
U.S. EPA - Office of the Administrator
Office of Homeland Security
202-564-2616 office
Personal Phone / Ex. 6

Exemptions 6 and 7(c)

Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 9/15/2016 2:41:52 PM
To: No, Fredrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=422039a7a4804d38a105e25f983fd39a-No, Fredrick]
Subject: RE: Deadline NOON THURSDAY SEPTEMBER 22, 2016: Awareness review for social cost of carbon FOIA from Chris Horner- EPA-HQ-2015-011157 - production #8

Attorney Client / Ex. 5

From: No, Fredrick
Sent: Thursday, September 15, 2016 10:41 AM
To: Wachter, Eric <Wachter.Eric@epa.gov>
Subject: RE: Deadline NOON THURSDAY SEPTEMBER 22, 2016: Awareness review for social cost of carbon FOIA from Chris Horner- EPA-HQ-2015-011157 - production #8

Attorney Client / Ex. 5

From: Wachter, Eric
Sent: Thursday, September 15, 2016 10:00 AM
To: No, Fredrick <No.Fredrick@epa.gov>
Cc: Newton, Jonathan <Newton.Jonathan@epa.gov>
Subject: RE: Deadline NOON THURSDAY SEPTEMBER 22, 2016: Awareness review for social cost of carbon FOIA from Chris Horner- EPA-HQ-2015-011157 - production #8

Attorney Client / Ex. 5

From: No, Fredrick
Sent: Thursday, September 15, 2016 9:34 AM
To: Wachter, Eric <Wachter.Eric@epa.gov>; Newton, Jonathan <Newton.Jonathan@epa.gov>
Subject: FW: Deadline NOON THURSDAY SEPTEMBER 22, 2016: Awareness review for social cost of carbon FOIA from Chris Horner- EPA-HQ-2015-011157 - production #8

Attorney Client / Ex. 5

From: Lubetsky, Jonathan
Sent: Thursday, September 15, 2016 8:09 AM
To: Mackay, Cheryl <Mackay.Cheryl@epa.gov>; Newton, Jonathan <Newton.Jonathan@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Harrison, Melissa <Harrison.Melissa@epa.gov>; Marten, Alex <Marten.Alex@epa.gov>; McGartland, Al <McGartland.Al@epa.gov>; Rackoff, Jonathan <Rackoff.Jonathan@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Auther, Larry <Auther.Larry@epa.gov>; No, Fredrick <No.Fredrick@epa.gov>; Kopits, Elizabeth <Kopits.Elizabeth@epa.gov>; Distefano, Nichole <DiStefano.Nichole@epa.gov>; Niebling, William <Niebling.William@epa.gov>; Dickerson, Tom <Dickerson.Tom@epa.gov>; Aarons, Kyle <Aarons.Kyle@epa.gov>; Vaught, Laura <Vaught.Laura@epa.gov>; Miles-McLean, Stuart <Miles-Mclean.Stuart@epa.gov>; Purchia, Liz <Purchia.Liz@epa.gov>; Brown, Tristan <Brown.Tristan@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Millett, John <Millett.John@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Moumbleaux, Joan <moumbleaux.joan@epa.gov>; Hull, George <Hull.George@epa.gov>
Subject: Deadline NOON THURSDAY SEPTEMBER 22, 2016: Awareness review for social cost of carbon FOIA from Chris Horner- EPA-HQ-2015-011157 - production #8

Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 8/13/2015 7:07:01 PM
To: Farren, Victor [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b4e4ef4434e44bb488ab822e82780809-Farren, Vic]
Subject: response letter
Attachments: EPA-HQ-2015-007843, 008703, 009702 response.docx

Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=82A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 7/31/2013 8:12:47 PM
To: Yuhas, Darlene J. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38851ac56f964cc48402197b6c255c43-Yuhas, Darlene J.]
Subject: feedback rquested
Attachments: Response Letter.docx

The above subject FOIA has been assigned to your office for a response, thank you.

From: Lemley, Lauren
Sent: Wednesday, January 29, 2014 2:56 PM
To: Elmore, Roxann
Cc: Blankenship, Steven; Jablonski, Janice
Subject: Assigned OHR FOIA - EPA-HQ-2014-003108

Hi Roxann,
I just assigned OHR FOIA – EPA-HQ-2014-003108, requesting:

1) All Standard Forms SF-50 (Notifications of Personnel Action) for Environmental Protection Agency employee Gina McCarthy, formerly Assistant Administrator of the EPA's Office of Air and Radiation and currently Administrator of EPA; and

2) All expense reimbursement reports submitted by Gina McCarthy from January 1, 2009 to the present.

Please assign as appropriate. Thank you.

Lauren Lemley
Office of Policy and Resources Management, OARM
202-564-1290

Message

From:	Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent:	3/13/2013 1:51:10 PM
To:	O'Hara, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Ce40c878e4f943889ad5ef70ded8f88d-O'Hara, James]
CC:	Thompson, Diane [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=73cdf93a442244c6a11c80c0e6ae14f7-Thompson, Diane]; Ganesan, Arvin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E54cc561b28b4726bf8f6c7f8826d87e-Ganesan, Arvin]; Vaught, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]
Subject:	FW: another set
Attachments:	Pages from HQ-FOI-01268-12 Processing - ReleaseRedact WOAttachments (EPA-3262 thru EPA-3655 with 3339 3340 removed).pdf

755 pages

From: Wachter, Eric
Sent: Monday, March 11, 2013 4:50 PM
To: Cohen, David; Bloomgren, David; Kelly, Lynn; Miller, Kevin
Subject: another set

This is the final set I'll send you today.

Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 7/6/2016 8:01:32 PM
To: No, Fredrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=422039a7a4804d38a105e25f983fd39a-No, Fredrick]
Subject: RE: OEX Awareness Review - FW: deadline 10am FRIDAY July 8 - awareness review of CPP FOIA production EPA-HQ-2015-000155

Attorney Client Privilege / Ex. 5

From: No, Fredrick
Sent: Wednesday, July 06, 2016 1:28 PM
To: Wachter, Eric <Wachter.Eric@epa.gov>
Subject: OEX Awareness Review - FW: deadline 10am FRIDAY July 8 - awareness review of CPP FOIA production EPA-HQ-2015-000155

Attorney Client Privilege / Ex. 5

Thanks,

Fred

From: Mackay, Cheryl
Sent: Wednesday, July 06, 2016 12:34 PM
To: Niebling, William <Niebling.William@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; Auther, Larry <Auther.Larry@epa.gov>; Owens, Nicole <Owens.Nicole@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Aarons, Kyle <Aarons.Kyle@epa.gov>; Distefano, Nichole <DiStefano.Nichole@epa.gov>; Brown, Tristan <Brown.Tristan@epa.gov>; Newton, Jonathan <Newton.Jonathan@epa.gov>; No, Fredrick <No.Fredrick@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Millett, John <Millett.John@epa.gov>; Harrison, Melissa <Harrison.Melissa@epa.gov>; Hull, George <Hull.George@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Tate, Ragan <Tate.Ragan@epa.gov>
Cc: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Mroz, Jessica <mroz.jessica@epa.gov>
Subject: deadline 10am FRIDAY July 8 - awareness review of CPP FOIA production EPA-HQ-2015-000155

Hi All,

Attorney Client Privilege / Ex. 5

Thanks,
Cheryl

Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 9/19/2014 1:26:16 PM
To: Willis, Sharnett [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=97b55bdfac5e41d8aa81064dfa2cb944-Willis, Sharnett]
Subject: HQ-2014-009099.draft.response.letter
Attachments: HQ-2014-009099.draft.response.letter.docx

If you are still interested, we would like to offer you this detail opportunity. The 120-day assignment would expose you to many cutting-edge legal and policy issues in FOIA processing and should prove to be a productive and mutually beneficial experience.

Please contact me at your convenience so we can arrange a start date and answers any questions you might have. Thanks again.

Eric E. Wachter
Director, Office of the Executive Secretariat
U.S. Environmental Protection Agency
(202) 564-0507 office
Personal Phone / Ex. 6

Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 1/30/2014 8:49:17 PM
To: Yuhas, Darlene J. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38851ac56f964cc48402197b6c255c43-Yuhas, Darlene J.]
Subject: FW: Activity in Case 1:12-cv-01617-JEB COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Order
Attachments: CEIII_Mem_Ct.ord.pdf; CEIII_Ct.ord.pdf

Importance: High

From: Kelly, Lynn
Sent: Wednesday, January 29, 2014 3:51 PM
To: Wachter, Eric
Cc: Newton, Jonathan; No, Fredrick; Miller, Kevin
Subject: FW: Activity in Case 1:12-cv-01617-JEB COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Order
Importance: High

Attorney Client Privilege, Attorney Work Product / Ex. 5

Lynn Kelly | US EPA | Office of General Counsel | 1200 Pennsylvania Ave., NW | WJC North, Mail Code 2377A | Washington DC 20460 | phone: (202) 564-3266

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From: Nebeker, Mark (USADC) [mailto:Mark.Nebeker@usdoj.gov]
Sent: Wednesday, January 29, 2014 2:07 PM
To: Kelly, Lynn
Subject: FW: Activity in Case 1:12-cv-01617-JEB COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Order

Attorney Client Privilege, Attorney Work Product / Ex. 5

From: DCD_ECFNotice@dcd.uscourts.gov [mailto:DCD_ECFNotice@dcd.uscourts.gov]
Sent: Wednesday, January 29, 2014 12:25 PM
To: DCD_ECFNotice@dcd.uscourts.gov
Subject: Activity in Case 1:12-cv-01617-JEB COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Order

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[7723aa7219a2a9e8d17a972b132d719615b07f398de36d5a2b75fa09e9767f6ece49
b61410014c1ae280d319c0d30da46ba25311adc3e458a81b9ffa4eed0d54]]

Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 4/4/2013 6:10:00 PM
To: Gaston.brewer@uscg.mil.
Subject: FW: USCG Equity Files 1 of 5
Attachments: USCG_Part1.pdf; HQ-FOI-01268-12 Request Letter.pdf

Dear Mr. Brewer,
This is the first of five emails for you. Attached for your review is a subset of records from a large release that is going out soon from the EPA. This subset contains Coast Guard records that we would like the Coast Guard to review before we release them. There is, unfortunately, a tight deadline so we'll need them back by April 11...April 12 at the latest. Questions should be directed to Fredrick No, whose contact information is below. Thank you very much for your assistance.

Eric E. Wachter
Director, Office of the Executive Secretariat
U.S. Environmental Protection Agency
(202) 564-7960 office
(202) 501-1328 fax

From: No.Fredrick@epa.gov
Sent: Wednesday, April 03, 2013 5:35 PM
To: Wachter, Eric
Subject: USCG Equity Files 1 of 5

Regards,

Fredrick K. No
Attorney-Adviser
Office of Executive Secretariat
Office of the Administrator
Environmental Protection Agency
No.Fredrick@epa.gov
Phone: 202.564.2793
Office: ARN #2411C

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Message

From:	Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent:	4/11/2013 9:00:44 PM
To:	Kelly, Lynn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=078d992839fc4a3f85689616b9030e72-Kelly, Lynn]
Subject:	FW:
Attachments:	DRF WITH OEX REMOVED_Part24.pdf; DRF WITH OEX REMOVED_Part23.pdf; DRF WITH OEX REMOVED_Part22.pdf

From: No, Fredrick
Sent: Thursday, April 11, 2013 12:42 PM
To: Wachter, Eric
Subject:

Regards,

Fredrick K. No
Attorney-Adviser
Office of Executive Secretariat
Office of the Administrator
Environmental Protection Agency
Phone: 202.564.2793
Office: ARN #2411C

CONFIDENTIAL: THIS TRANSMISSION MAY CONTAIN DELIBERATIVE, ATTORNEY-CLIENT, ATTORNEY-WORK PRODUCT OR OTHERWISE PRIVILEGED MATERIAL. DO NOT RELEASE UNDER FOIA WITHOUT APPROPRIATE REVIEW. IF THIS MESSAGE HAS BEEN RECEIVED BY YOU IN ERROR, YOU ARE INSTRUCTED TO DELETE THIS MESSAGE FROM YOUR MACHINE AND ALL STORAGE MEDIA WHETHER ELECTRONIC OR HARD COPY.

To: Aarons, Kyle <Aarons.Kyle@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: No, Fredrick <No.Fredrick@epa.gov>
Subject: [Please Review] FLINT FOIA: EPA-HQ-2016-004550 Greenwire Bogardus Relativity Review - ED_000620 Flint Comprehensive Collection - All Documents- Draft Flint Statement

Nancy & Kyle:

Attorney Client Privilege, Attorney Work Product / Ex. 5

Thank you!
Denise A. Walker
FOIA Expert Assistance Team
202-564-6520

Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 12/2/2014 6:06:13 PM
To: No, Fredrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=422039a7a4804d38a105e25f983fd39a-No, Fredrick]
Subject: RE: FOIA litigation - prompt response required re: EPA-HQ-2014-003658 (GRIFO)

Attorney Client Privilege, Attorney Work Product / Ex. 5

From: No, Fredrick
Sent: Monday, November 24, 2014 5:29 PM
To: Wachter, Eric
Subject: FW: FOIA litigation - prompt response required re: EPA-HQ-2014-003658 (GRIFO)

Attorney Client Privilege, Attorney Work Product / Ex. 5

Subject: FOIA litigation - prompt response required

Hello,

Attorney Client Privilege, Attorney Work Product / Ex. 5

Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 3/26/2013 10:28:31 PM
To: Kinberg, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38dd3f4d1915487e9ba68a67d99979ea-Kinberg, Steven]
CC: Dickerson, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6f65d0e5f06246a59e1929845a63d367-TDICKERS]; Ganesan, Arvin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E54cc561b28b4726bf8f6c7f8826d87e-Ganesan, Arvin]; Vaught, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]; Hope, Brian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C27b55619fb248cc8776fc46cd3f8b0d-BHope]; Newton, Jonathan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8a0f1a1699564041bd74c49a526c0fe5-Jnewton1]
Subject: RE: House Science Committee staff questions
Attachments: House Science Committee Staff Questions 3 20 13.docx

Apologies, Steve, I thought I had sent this last week with the Upton responses. Let me know if you need anything else.

From: Kinberg, Steven
Sent: Tuesday, March 26, 2013 5:48 PM
To: Wachter, Eric; Hope, Brian; Newton, Jonathan
Cc: Dickerson, Tom
Subject: RE: House Science Committee staff questions

Just checking in to see if you have a sense of when you might have a draft to us. Let us know. Thank you.

Steven Kinberg
Legislative Counsel Unit
Office of Congressional and Intergovernmental Relations
U.S. EPA
(202) 564 5037

From: Dickerson, Tom
Sent: Monday, March 18, 2013 3:58 PM
To: Wachter, Eric; Hope, Brian; Newton, Jonathan
Cc: Ganesan, Arvin; Vaught, Laura; Kinberg, Steven; Miller, Kevin
Subject: House Science Committee staff questions

Last Friday, Jeff Wells of OEI, Kevin Miller of OGC, and I briefed House Science Committee staff members on the record retrieval process for congressional inquiries as well as FOIA. In that context, a number of follow-up questions came up, a number of them, of course, about the handling of the Administrator's email accounts.

Attorney Client / Ex. 5

Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 10/23/2013 8:17:21 PM
To: Johnson, Alisha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=94a2c1d7f61949feb49d7428eb4fde7d-Johnson, Alisha]; Bloomgren, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25b1f78557f54801968bd271575c8e74-Bloomgren, David]
Subject: FOIA EPA-HQ-2013-003564
Attachments: EPA-HQ-2013-003564 (deduped and alligned with JVN Rendell).pdf; Elliott Rqst.pdf

FYI this will be going out tomorrow.

Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 9/21/2016 4:34:57 PM
To: Hull, George [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f6dd2fab273845218756495c7a2d94ad-ghull]
CC: Farren, Victor [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b4e4ef4434e44bb488ab822e82780809-Farren, Vic]; Newton, Jonathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a0f1a1699564041bd74c49a526c0fe5-Jnewton1]
Subject: PBS FOIA response
Attachments: EPA-HQ-2014-001436 - Final Response.pdf; EPA-HQ-2014-001436 responsive records.pdf

Hello, George,
This will be going out later today.
Thanks,
Eric

(o) 202-564-4711
(c) 202-368-8193

From: Metzger, Philip
Sent: Tuesday, May 21, 2013 7:11 PM
To: Acting Administrator
Subject: FW: draft charge memo

Attorney Client / Ex. 5

Phil

Philip C. Metzger
Counselor to the Deputy Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W., MC 1101A
Washington, DC 20460
(202) 564-3776

From: Metzger, Philip
Sent: Tuesday, May 21, 2013 7:10 PM
To: Wynn, Renee; Minoli, Kevin
Subject: draft charge memo

Attorney Client / Ex. 5

Phil

Philip C. Metzger
Counselor to the Deputy Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W., MC 1101A
Washington, DC 20460
(202) 564-3776

Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 5/30/2013 2:58:06 PM
To: Bloomgren, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=25b1f78557f54801968bd271575c8e74-Bloomgren, David]
CC: Johnson, Alisha [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=94a2c1d7f61949feb49d7428eb4fde7d-Johnson, Alisha]
Subject: RE: Personnel FOIA

Sure. We have two more items to include. I'll then forward that to you and along with the response letter.

From: Bloomgren, David
Sent: Thursday, May 30, 2013 10:57 AM
To: Wachter, Eric
Cc: Johnson, Alisha
Subject: Personnel FOIA

Hi Eric –

Can you forward me a copy of the Examiner FOIA that could go today for awareness?

Thanks,
David

David E. Bloomgren
U.S. Environmental Protection Agency
Direct: 202.564.0639
Mobile: 202.604.5926

Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 4/15/2015 8:32:17 PM
To: LaCour, Alice S. (CIV) [Alice.S.LaCour@usdoj.gov]
CC: Newton, Jonathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a0f1a1699564041bd74c49a526c0fe5-Jnewton1]
Subject: RE: letters
Attachments: HQ-2013-001343 (121130) Fee Waiver Letter.pdf; HQ-2013-001343 (140430) Appeal HQ-2014-006117.pdf; HQ-2013-001343 (140116) requestor response to EPA effort to narrow searc....pdf; HQ-2013-001343 (131106) Status of Requests Pending in AO.PDF

Sure, Alice. No need to apologize for your requests. I appreciate your assistance.

Attorney Client / Ex. 5

Let me know if you need anything else. Thanks again.

From: LaCour, Alice S. (CIV) [mailto:Alice.S.LaCour@usdoj.gov]
Sent: Wednesday, April 15, 2015 2:29 PM
To: Wachter, Eric
Subject: RE: letters

Eric,

Apologies for yet another request. Can you also send the following correspondence?

Attorney Client / Ex. 5

Thank you!

Alice Shih LaCour
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue NW, Room 6143
Washington, DC 20530
(202) 514-3489 phone
(202) 616-8470 fax
alice.s.lacour@usdoj.gov

From: LaCour, Alice S. (CIV)
Sent: Wednesday, April 15, 2015 2:11 PM
To: 'Wachter, Eric'
Subject: RE: letters

Hi Eric,

Message

From:	Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent:	4/11/2013 8:53:51 PM
To:	Kelly, Lynn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=078d992839fc4a3f85689616b9030e72-Kelly, Lynn]
Subject:	FW:
Attachments:	DRF WITH OEX REMOVED_Part18.pdf; DRF WITH OEX REMOVED_Part17.pdf; DRF WITH OEX REMOVED_Part16.pdf

From: No, Fredrick
Sent: Thursday, April 11, 2013 12:30 PM
To: Wachter, Eric
Subject:

Regards,

Fredrick K. No
Attorney-Adviser
Office of Executive Secretariat
Office of the Administrator
Environmental Protection Agency
Phone: 202.564.2793
Office: ARN #2411C

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Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 8/30/2016 8:09:57 PM
To: Mackay, Cheryl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=af74520aad9041eb83e051f194fcc58e-CMackay]
CC: Hope, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c27b55619fb248cc8776fc46cd3f8b0d-BHope]; Farren, Victor [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b4e4ef4434e44bb488ab822e82780809-Farren, Vic]; Newton, Jonathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a0f1a1699564041bd74c49a526c0fe5-Jnewton1]
Subject: RE: awareness review- DEADLINE Wednesday Aug 31 at NOON- FOIA from UCS: EPA-HQ-2015-008592

Page 116 seems to have email addresses incorrectly redacted.

From: Hope, Brian
Sent: Tuesday, August 30, 2016 4:02 PM
To: Wachter, Eric <Wachter.Eric@epa.gov>
Subject: Fw: awareness review- DEADLINE Wednesday Aug 31 at NOON- FOIA from UCS: EPA-HQ-2015-008592

FYI

From: Mackay, Cheryl
Sent: Tuesday, August 30, 2016 3:55 PM
To: Evanko, Peter; Frithsen, Jeff; Saint, Chris; Nolte, Kami; Gibbons, Dayna; Zambrana, Jose; Perry, Dale; Distefano, Nichole; Hanley, Mary; Ross, Mary; No, Fredrick; Newton, Jonathan; Auther, Larry; Cursio, Heather; Routt, Christiane; Aarons, Kyle; Grantham, Nancy; Hope, Brian; Asher, Jonathan
Subject: RE: awareness review- DEADLINE Wednesday Aug 31 at NOON- FOIA from UCS: EPA-HQ-2015-008592

Hi again everyone,

Attorney Client / Ex. 5

Thanks!
Cheryl

Cheryl A. Mackay
Office of General Counsel
U.S. Environmental Protection Agency

Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 8/30/2016 4:47:16 PM
To: Mackay, Cheryl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=af74520aad9041eb83e051f194fcc58e-CMackay]
CC: Farren, Victor [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b4e4ef4434e44bb488ab822e82780809-Farren, Vic]; Hope, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c27b55619fb248cc8776fc46cd3f8b0d-BHope]; Newton, Jonathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a0f1a1699564041bd74c49a526c0fe5-Jnewton1]
Subject: RE: awareness review- DEADLINE Wednesday Aug 31 at NOON- FOIA from UCS: EPA-HQ-2015-008592

Yes, Cheryl, that is fine with me. Thanks.

From: Mackay, Cheryl
Sent: Tuesday, August 30, 2016 12:21 PM
To: Wachter, Eric <Wachter.Eric@epa.gov>
Cc: Farren, Victor <Farren.Victor@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>
Subject: RE: awareness review- DEADLINE Wednesday Aug 31 at NOON- FOIA from UCS: EPA-HQ-2015-008592

Thanks Eric and Victor.

It looks like Victor made some good catches with the redactions. I will make sure those are corrected.

Attorney Client / Ex. 5

Thanks!

Cheryl

Cheryl A. Mackay
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-2023

From: Wachter, Eric
Sent: Tuesday, August 30, 2016 11:58 AM
To: Mackay, Cheryl <Mackay.Cheryl@epa.gov>
Cc: Farren, Victor <Farren.Victor@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>
Subject: FW: awareness review- DEADLINE Wednesday Aug 31 at NOON- FOIA from UCS: EPA-HQ-2015-008592

Hi, Cheryl,
Some additional thoughts from Victor.
Thanks,
Eric

From: Farren, Victor
Sent: Monday, August 29, 2016 4:53 PM

Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC8D4DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 8/30/2016 3:32:49 PM
To: Mackay, Cheryl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=af74520aad9041eb83e051f194fcc58e-CMackay]
CC: Hope, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c27b55619fb248cc8776fc46cd3f8b0d-BHope]; Farren, Victor [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b4e4ef4434e44bb488ab822e82780809-Farren, Vic]; No, Fredrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=422039a7a4804d38a105e25f983fd39a-No, Fredrick]; Newton, Jonathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a0f1a1699564041bd74c49a526c0fe5-Jnewton1]
Subject: RE: awareness review- DEADLINE Wednesday Aug 31 at NOON- FOIA from UCS: EPA-HQ-2015-008592

Attorney Client / Ex. 5

Thanks,
Eric

From: Hope, Brian
Sent: Monday, August 29, 2016 4:02 PM
To: Wachter, Eric <Wachter.Eric@epa.gov>; Farren, Victor <Farren.Victor@epa.gov>; No, Fredrick <No.Fredrick@epa.gov>
Subject: Fw: awareness review- DEADLINE Wednesday Aug 31 at NOON- FOIA from UCS: EPA-HQ-2015-008592

From: Mackay, Cheryl
Sent: Monday, August 29, 2016 3:39 PM
To: Evanko, Peter; Frithsen, Jeff; Saint, Chris; Nolte, Kami; Gibbons, Dayna; Zambrana, Jose; Perry, Dale; Distefano, Nichole; Hanley, Mary; Ross, Mary; No, Fredrick; Newton, Jonathan; Auther, Larry; Cursio, Heather; Routt, Christiane; Aarons, Kyle; Grantham, Nancy; Hope, Brian; Asher, Jonathan
Subject: awareness review- DEADLINE Wednesday Aug 31 at NOON- FOIA from UCS: EPA-HQ-2015-008592

Hi all,

Attorney Client / Ex. 5

Thanks,
Cheryl

Cheryl A. Mackay

Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 8/30/2016 3:25:00 PM
To: Mackay, Cheryl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=af74520aad9041eb83e051f194fcc58e-CMackay]
CC: No, Fredrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=422039a7a4804d38a105e25f983fd39a-No, Fredrick]; Farren, Victor [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b4e4ef4434e44bb488ab822e82780809-Farren, Vic]; Hope, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c27b55619fb248cc8776fc46cd3f8b0d-BHope]
Subject: RE: Deadline 10am Wed. 8/30: awareness review of FOIA requests EPA-HQ-2016-006893 & 007769

Hi, Cheryl,
I have reviewed and see no issues.
Thanks,
Eric

From: Hope, Brian
Sent: Monday, August 29, 2016 12:40 PM
To: Wachter, Eric <Wachter.Eric@epa.gov>
Cc: No, Fredrick <No.Fredrick@epa.gov>; Farren, Victor <Farren.Victor@epa.gov>
Subject: Fw: Deadline 10am Wed. 8/30: awareness review of FOIA requests EPA-HQ-2016-006893 & 007769

From: Mackay, Cheryl
Sent: Monday, August 29, 2016 11:40 AM
To: Hope, Brian
Subject: FW: Deadline 10am Wed. 8/30: awareness review of FOIA requests EPA-HQ-2016-006893 & 007769

Hi Brian, Sending this to you with Jonathan out. Thanks.

From: Mackay, Cheryl
Sent: Monday, August 29, 2016 11:37 AM
To: Zenick, Elliott <Zenick.Elliott@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Tate, Ragan <Tate.Ragan@epa.gov>; Newton, Jonathan <Newton.Jonathan@epa.gov>; No, Fredrick <No.Fredrick@epa.gov>; Hull, George <Hull.George@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Harrison, Melissa <Harrison.Melissa@epa.gov>; Aarons, Kyle <Aarons.Kyle@epa.gov>; Brown, Tristan <Brown.Tristan@epa.gov>; Niebling, William <Niebling.William@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>
Subject: Deadline 10am Wed. 8/30: awareness review of FOIA requests EPA-HQ-2016-006893 & 007769

All--

Message

From: Wachter, Eric [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2A2C8E3CC804DCA93C6C819D42EB47D-WACHTER, ERIC]
Sent: 4/26/2016 2:41:02 PM
To: Newton, Jonathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a0f1a1699564041bd74c49a526c0fe5-Jnewton1]; No, Fredrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=422039a7a4804d38a105e25f983fd39a-No, Fredrick]
Subject: RE: Deadline 10am WEDNESDAY: Awareness review for social cost of carbon FOIA from Chris Horner- EPA-HQ-2015-011157

Thanks, guys.

Those two documents look fine to me.

Attorney Client / Ex. 5

From: Newton, Jonathan
Sent: Monday, April 25, 2016 2:14 PM
To: Wachter, Eric <Wachter.Eric@epa.gov>; No, Fredrick <No.Fredrick@epa.gov>
Subject: FW: Deadline 10am WEDNESDAY: Awareness review for social cost of carbon FOIA from Chris Horner- EPA-HQ-2015-011157

Jonathan V. Newton, Attorney-Advisor
U.S. EPA, Office of the Executive Secretariat
1200 Pennsylvania Avenue, NW (MC 1105A)
Washington, D.C. 20460
(202) 564-6164

From: Mackay, Cheryl
Sent: Monday, April 25, 2016 1:50 PM
To: Mackay, Cheryl <Mackay.Cheryl@epa.gov>; Newton, Jonathan <Newton.Jonathan@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Harrison, Melissa <Harrison.Melissa@epa.gov>; Marten, Alex <Marten.Alex@epa.gov>; McGartland, Al <McGartland.Al@epa.gov>; Rackoff, Jonathan <Rackoff.Jonathan@epa.gov>; Smith, Roxanne <Smith.Roxanne@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Auther, Larry <Auther.Larry@epa.gov>; No, Fredrick <No.Fredrick@epa.gov>; Kopits, Elizabeth <Kopits.Elizabeth@epa.gov>; Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Distefano, Nichole <DiStefano.Nichole@epa.gov>; Niebling, William <Niebling.William@epa.gov>; Dickerson, Tom <Dickerson.Tom@epa.gov>; Aarons, Kyle <Aarons.Kyle@epa.gov>; Vaught, Laura <Vaught.Laura@epa.gov>; Miles-McLean, Stuart <Miles-Mclean.Stuart@epa.gov>; Purchia, Liz <Purchia.Liz@epa.gov>; Brown, Tristan <Brown.Tristan@epa.gov>
Cc: Smith, Andrew <Smith.Andrew@epa.gov>
Subject: Deadline 10am WEDNESDAY: Awareness review for social cost of carbon FOIA from Chris Horner- EPA-HQ-2015-011157

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Finally, FYI, a number of the documents in this production have received WH and OMB consult:

Attorney Client / Ex. 5

Cheryl A. Mackay
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-2023
584

Message

From: Wooden-Aguilar, Helena [Wooden-Aguilar.Helena@epa.gov]
Sent: 6/13/2018 11:33:35 AM
To: Leopold, Matt (OGC) [Leopold.Matt@epa.gov]
CC: White, Elizabeth [white.elizabeth@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]
Subject: Request to Hire Attorneys for OEX's FOIA Processing Team
Attachments: attachment 1.pdf; ATT00001.htm

Good Morning Matt-

I hope you are well. Sending this message to let you know that a hiring request memo is routing to you for approval to hire 6 attorneys for OEX's FOIA processing team in AO.

By way of background, when we submit our paperwork to HR they require OGC's concurrence on all attorney (905) hiring. Beth and I are working hard to keep this process moving forward.

I am happy to work with Kevin upon approval by OGC leadership.

Thank you in advance for your help.

Helena

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

June 12, 2018

MEMORANDUM

OFFICE OF THE
EXECUTIVE SECRETARIAT

SUBJECT: Request to Hire Six GS-0905 Attorney-Advisors for the Office of the Administrator's Freedom of Information Act Processing Team

FROM: Elizabeth B. White
Director

THRU: Helena Wooden-Aguilar
Acting Deputy Chief of Staff

TO: Matthew Z. Leopold
General Counsel

The Office of the Executive Secretariat requests permission to hire six GS-0905 attorney-advisors for the Office of the Administrator's Freedom of Information Act processing team.

As part of the Office of the Administrator's efforts to centralize FOIA processing in response to the unprecedented and exponential increase in information access requests during the past several years, the Office of the Chief Financial Officer recently allotted OEX six additional Full-Time Equivalent positions. Those six positions will more than double the current size of the OEX FOIA staff, allowing us to process requests faster, reduce litigation exposure and improve compliance with the FOIA statute.

Managing the AO's FOIA and information requests requires significant interaction with career and political senior officials, special assistants in the Immediate Office and subject matter experts and frequently requires close coordination or consultation with the Office of General Counsel, the Office of Environmental Information, the Office of Public Affairs, the Office of Policy and/or the Office of Congressional and Intergovernmental Relations. The records and documents responsive to these requests are often highly sensitive, reflecting the policies and priorities of the Administrator and the Presidential Administration. Consequently, their review requires not just a functional knowledge of the FOIA and the mechanics of its exemptions, but also the ability to identify novel legal issues; interpret and apply statutes, regulations and case law; and harmonize legal and policy issues. Non-attorneys are generally not trained to address the overlapping issues that are germane to requests assigned to or involving the AO.

The Office of General Counsel's heavy workload does not permit it to provide the daily FOIA-, discovery- and information law-related support OEX and the AO need to manage its caseload. While the FOIA Expert Assistance Team can help in coordinating and tracking FOIA requests across the programs and regions, the responsibility for processing and reviewing FOIA and other information requests lies in the program offices themselves.

For these reasons, I ask that OEX be granted permission to hire six GS-0905 series attorneys: four staff attorneys at the GS-12, 13 or 14 level and one supervisory attorney at the GS-15 level. Attached are position descriptions for the 12- and 13-level positions. PDs for the 14- and 15-level positions are currently being classified. Please let me know if you have any questions or need additional information.

Attachments

cc: Ryan Jackson

Message

From: Monson, Mahri [Monson.Mahri@epa.gov]
Sent: 7/6/2018 2:38:21 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]
CC: Veney, Carla [Veney.Carla@epa.gov]
Subject: Fwd: FOR KEVIN'S REVIEW: Delegation Chief FOIA Officer
Attachments: 1-131 OGC Chief FOIA Officer JMH review (002).docx; ATT00001.htm; Delgation Cover Memo JMH Review.docx; ATT00002.htm; Delagation Memo to Lattermore .docx; ATT00003.htm; RE: 1-131 OGC Chief FOIA Officer JMH review (002).docx; ATT00004.htm

Carla,
Since I'm out today, any chance you'd be willing to print this for Kevin? Kevin, Neil and Elise would like your review before sending it to Matt.

Thanks!
Mahri

Sent from my iPhone

Begin forwarded message:

> **From:** "Bigioni, Neil" <bigioni.neil@epa.gov>
> **Date:** July 6, 2018 at 9:04:45 AM EDT
> **To:** "Monson, Mahri" <Monson.Mahri@epa.gov>
> **Cc:** "Packard, Elise" <Packard.Elise@epa.gov>
> **Subject: Delegation Chief FOIA Officer**
>
> Mahri,
>
> Please include this in Kevin's packet.
> Elise has reviewed this and asked that Kevin review it before we send to Matt, then Kraig Lattimore for processing.
>
> Thanks, and have a great weekend,
>
> Neil
>
> ---
>
> **From:** Bigioni, Neil
> **Sent:** Thursday, July 05, 2018 6:00 PM
> **To:** Bigioni, Neil <bigioni.neil@epa.gov>
> **Subject:** delegation

Neil R. Bigioni
Acting Director National FOIA Office
EPA Office of General Counsel
(202) 564-2281

1-131. Chief FOIA Officer (1200 TN 670)

1. **AUTHORITY.** To exercise all responsibilities of the U.S. Environmental Protection Agency's Chief Freedom of Information Act (FOIA) Officer in accordance with the Freedom of Information Act, 5 U.S.C. § 552, as amended ("the Act") including but not limited, to serve as the Chief FOIA Officer, and:

   a. establish agency-wide responsibility for efficient and appropriate compliance with the Act;

   b. monitor implementation of the Act throughout EPA and keep the Administrator and the Attorney General appropriately informed of the agency's performance in implementing the Act;

   c. recommend to the Administrator such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of the Act;

   d. review and report to the Attorney General, through the Administrator, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing the Act;

   e. facilitate public understanding of the purposes of the statutory exemptions of the Act by including concise descriptions of the exemptions in both the agency's handbook issued under 5 U.S.C. § 552(g), and in the agency's annual report required under the Act, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply;

   f. offer training to agency staff regarding their responsibilities under the Act;

   g. serve as the primary agency liaison with the Office of Government Information Services and the Office of Information Policy;

   h. execute any other functions of the Chief FOIA Officer set forth in the Act.

2. **TO WHOM DELEGATED.** The General Counsel.

3. **LIMITATIONS.** None.

4. **REDELEGATION AUTHORITY.** The authorities in 1.a. through g. may be redelegated from the General Counsel to the Director of the National FOIA Office, and may be further redelegated to the Assistant Director or equivalent level of the National FOIA Office, and no further. An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any

official in the chain of command to the official to whom it has been specifically redelegated.

5. **REFERENCES.**
   a. 5 U.S.C. § 552
   b. 44 U.S.C. Chapter 35

EPA FOIA Facts and Figures

Requests -- trends

- For the 10 years prior to FY17, EPA received an average of 10,576 FOIA requests per year, which represented 13%-15% of the FOIA requests received government-wide
- In FY17, EPA received 11,518 requests – the most received by EPA in a decade
- Adjusting to the period 1/20/17 – 12/31/17, EPA received 11,416 FOIA requests
- For period 1/1/18 – 1/26/18, EPA has received 1826 requests; assuming requests continue at this rate (over 31 requests per day), EPA would receive 11,491 requests in CY18

Backlog Project

- As of September 2017, EPA had 651 open FOIA requests that had been pending since 12/31/16 or earlier, including a request that had been pending since 11/10/2010.
- EPA undertook a concentrated effort to close out these requests that had pending since the prior administration.
- By 12/31/17, EPA closed 301 of the 651 requests that had been pending since 12/31/16 or earlier, reducing the "backlogged backlog" to 350 requests (and closed that 11/10/2010 request)
- From 1/1/18 – 2/26/18, we have closed an additional 93 of those requests, bringing the number of holdover requests from the prior administration down to 257, a 60% reduction of the holdover requests in less than 6 months
- 53% of the 257 holdover requests deal with pesticide registration information

MyProperty

- In 2010 EPA developed a tool called "MyProperty," designed to allow the public to self-request compliance information for a specific address from a variety of EPA databases
- Since that time, EPA has further developed the MyProperty tool to be a comprehensive search across EPA databases, providing complete information regarding a specific address. MyProperty searches the Facility Registry System and the data sources contained in Envirofacts.
- The enhanced version of MyProperty is expected to go live to the public next week, and will be available on EPA's FOIA Internet site
- For the month of January 2018, 49% of the 970 FOIA requests received by EPA were for compliance information regarding specific addresses. MyProperty will now make that information directly accessible by the public and will include a printable statement that the information was generated by the EPA MyProperty database.

FOIA Litigation

Message

From: Dolph, Becky [Dolph.Becky@epa.gov]
Sent: 3/4/2018 9:44:03 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]
Subject: Fwd: FOIA Slides
Attachments: FOIA Lean Event OutBrief.pptx; ATT00001.htm

FYI

Sent from my iPhone

Begin forwarded message:

> **From:** "Poole, Laura" <Poole.Laura@epa.gov>
> **To:** "Gottesman, Larry" <Gottesman.Larry@epa.gov>, "Clarke, Victoria" <clarke.victoria@epa.gov>, "Moumbleaux, Joan" <moumbleaux.joan@epa.gov>, "Hammitt, Jennifer" <Hammitt.Jennifer@epa.gov>, "Kelly, Lynn" <Kelly.Lynn@epa.gov>, "Schumacher, Wendy" <schumacher.wendy@epa.gov>, "Thompson, BrianK" <Thompson.BrianK@epa.gov>, "Crawford, Tim" <Crawford.Tim@epa.gov>, "Lubetsky, Jonathan" <Lubetsky.Jonathan@epa.gov>, "Evanko, Peter" <Evanko.Peter@epa.gov>, "Kercheval, Stephanie" <Kercheval.Stephanie@epa.gov>, "Engels, Alan" <engels.alan@epa.gov>, "Wheatley, Jessica" <wheatley.jessica@epa.gov>, "Busterud, Gretchen" <Busterud.Gretchen@epa.gov>, "Price, Lisa" <Price.Lisa@epa.gov>, "Blake, Wendy" <Blake.Wendy@epa.gov>, "Saltman, Tamara" <Saltman.Tamara@epa.gov>, "Dolph, Becky" <Dolph.Becky@epa.gov>
> **Cc:** "DeBell, Kevin" <debell.kevin@epa.gov>
> **Subject: FOIA Slides**
>
> Good Evening,
> Please find attached the slides from today's briefing. Thank you again for your enthusiastic participation in this weeks event. You all generated some great ideas and I look forward to working with you as we move forward.
>
> Have a great weekend,
> Laura

Sent from my iPhone

Begin forwarded message:

> **From:** "GM Sieber" <gmsieber@msipros.com>
> **To:** "Poole, Laura" <Poole.Laura@epa.gov>
> **Subject: FOIA Slides**
>
> Here you go. I will follow up with the Excel and process maps.

G. M. Sieber
President
MSI

Management Science and Innovation
P: 703-437-5236 x111
F: 703-995-0667
http://www.MSIPROS.com
Follow us on Linked In
Or
Check out my Blog

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Kaizen Event Report-Out

FOIA Process Improvement

20 – 23 FEBRUARY 2018

This template is a standard Kaizen Event Report-Out template. Most kaizen events or projects end with a presentation to report on accomplishments and any pending team activities. Each event is unique, so feel free to customize slides as needed to capture the project. You can fill in the information on these slides in the order that is most convenient to your team, so feel free to skip slides and come back to them later.

This template includes an appendix of several optional slides that you may choose to include in your presentation. You can move those slides into any point in the presentation if you decide to use them. You may also alter the order of any of the other slides as appropriate.

11

EPA Lean Project Report-Out Presentation

Team Photo

(left to right): _____

Insert a photo of the lean project team.

Note: Could also use the photo on the title slide.

13

Participants

Role	Name	Function
Executive Sponsor	Kevin Minoli	
Process Owner	Becky Dolph	
OCI Coach	Laura Poole / Tamara Saltman	
Lead facilitator	Greg Sieber	
Co-Facilitator	Barry Angeline	

Role	Name	Function	Name	Function
Team Member	Larry Gottesman	National FOIA Officer	Peter Evanko	ORD FOIA Coordinator – Decentralized Program
Team Member	Wendy Schumacher	National FOIA Program GIS	Stephanie Kercheval	R10 FOIA Officer – Centralized Program
Team Member	Victoria Clarke	FEAT Attorney	Alan Engels	R8 FOIA Officer – Centralized Program
Team Member	Joan Moumbleaux	FEAT GIS	Lisa Price	R6 Deputy Director
Team Member	Jennifer Hammitt	ILPG Attorney	Jessica Wheatley	R5 FOIA Officer – Decentralized Program
Team Member	Lynn Kelly	ILPG Attorney	Gretchen Busterud	R9 DRC
Team Member	Tim Crawford	FOIAonline Manager	Jonathan Lubetsky	OAR FOIA Manager – Centralized Program
Team Member	Brian Thompson	E-Disco Acting DD		

List the event or project participants, including their functions in the process (e.g., supervisor, quality control, etc.). If appropriate, you can add participants' titles to this slide as well. Consider adding a second slide to allow adequate space to list all members and observers.

This info is included in the A3.

14

Project Definition (Same as information on the Project A3)

Problem Statement:
EPA uses a decentralized model or processing FOIA requests which relies on a variety of different processes across the agency. Simultaneously, the number of FOIA requests that involve more than one office or region has increased significantly in the last several years; which creates significant burden upon agency staff, results in confusion, increases the risk of litigation, affects timeliness of initial interaction with and final response to requestors, and raises uncertainty regarding the application of FOIA across the agency.

Scope:
The Agency's FOIA response process from initial receipt to final closure of request. This includes review of materials/documents collected, requests for support, and product requirements, E-discovery search and collection services,

Out of Scope:
but excludes litigation and issues involving Agency records management. Appeals to be handled in a later event.

Goal(s): (of the project)
Meet statutory deadlines for responding to FOIA requests on 100% of such requests received by FY22 and maintain no more than 900 pending requests at any one time.
FY19 Target: simple requests – 90% on-time; complex requests – 50% on-time; complex requests w/ agreed upon date – 75% on-time
FY22 Target: simple requests – 100% on-time; complex requests – ~~75%~~ 100% on-time; complex requests w/ agreed upon date – 100% on-time

Define the project using information from the A3 in addition to information from the event.

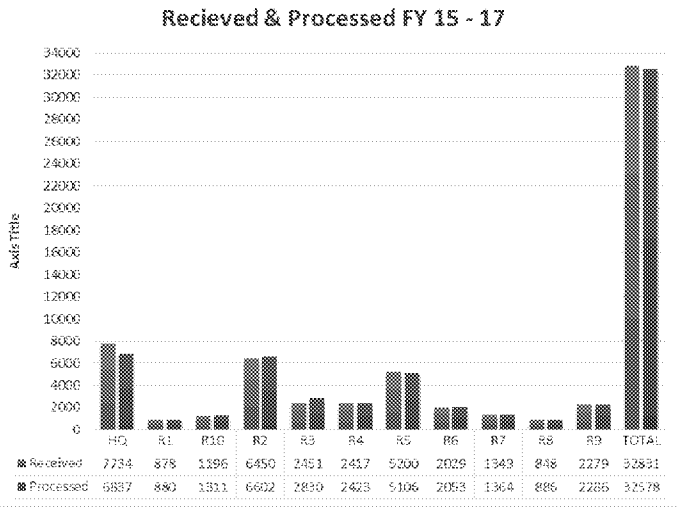
The Problem Statement briefly describes what the process is and why there was a need for kaizen.

The Scope should include the process start and end points
If the team has decided that anything is specifically out-of-scope or other boundary conditions, mention those here.
Example: This event examined the process from the time the States and Region negotiate and agree on performance criteria and measures to when EPA completes a performance report. Out of scope: Changes to regulations
Also include a description of the widget produced by the process and the customer (i.e., the end-user of the product or service resulting from the process).

Kaizen event Goals are statements of intent that focus team attention on the areas in which improvement results are desired. Kaizen event goals differ from objectives in that they are specific and measurable. The goal should include the metrics associated with the goal, targets, and timeframes.
Example: Reduce the time between permit application and permit decision by 50% by the end of FY18.

Key Findings

- Under normal circumstances, EPA has ability to process FOIA requests on pace with annual load
- Special circumstances and spikes cause backlogs that build over time
- High degree of inconsistency in processing
- Opportunities for improvement at the front of the process (submission form, intake, triage)
- Opportunities for improvement in streamlining reviews
- Lack of resources is a concern
- Disconnected, not user friendly information systems are a problem
- Increasing the capability of the people will make a big difference



	HQ	R1	R10	R2	R3	R4	R5	R6	R7	R8	R9	TOTAL
Received	7734	878	1396	6450	2451	2417	5200	2029	1343	848	2279	32831
Processed	6837	880	1311	6602	2830	2423	5106	2053	1364	886	2286	32578

Like the lead in a good story, introduce the key findings up front. Early exposure to results gets to the Sponsor's WIFM (what's in it for me) and may illicit a reaction, e.g. the Sponsor may nod in agreement or otherwise. This exposure can provide verbal and non-verbal feedback to help guide where the team can provide emphasis throughout the presentation.

Daily Activities

20 – 23 February

DAY ONE

Define Value Ideal State

- ✓ 9:00 Exec Kickoff
- ✓ Charter Review
- ✓ Expected Outcomes
- ✓ Lean Overview
- ✓ SIPOC
- ❑ Ideal Future State
  - ✓ VOC (incl. statutes)
  - ✓ Performance Goals
  - ❑ CTXs
  - ❑ Process Variants
  - ❑ Reverse engineer ideal future state process map
- ❑ Discuss Current State Process(es) in Comparison to Ideal State
  - ❑ Wait
  - ❑ WIP
  - ❑ Rework
  - ❑ Pending / Queue
  - ❑ Flow
- ❑ Initial Issues Exercise
- ❑ 4:30 Visit

DAY TWO

Analyze

- ✓ Present initial issues analysis
- ✓ Review Annual Report Analysis
- ✓ Affinitize Issues & Create Problem Statements
- ✓ List and Prioritize problems
- ❑ Root Cause Analysis
- ✓ Develop Solutions Via QFD
  - ❑ Address root causes
  - ❑ Relate solutions to goals, Problem Statements, CTXs
- ✓ Revise ideal state to create Future state
  - ✓ Process Walk (Waste, WIP, Flow…)
  - ✓ Integrate CTXs
    - Constraints
    - Statutes
    - Technologies
    - Controls

DAY THREE

Design Sessions

- ✓ Finish Future State
  - ❑ Cycle Time
  - ❑ Wait Time
  - ❑ Owner
  - ❑ Batch Size
  - ✓ Outputs
- ✓ Break out teams design and implement (start by 1100)
  - ❑ Detailed Future State Process based (modify the ideal state)
    - ❑ Business rules
    - ❑ Instrumentation
    - ❑ Measurements
    - ❑ Metrics/Huddle Board
  - ❑ Information Systems Requirements
    - ❑ Mock ups
    - ❑ Templates
    - ❑ Forms
    - ❑ Trackers
  - ❑ Policies and Manuals
    - ❑ Business Rules
    - ❑ FAQs
    - ❑ Governance
  - ❑ Implementation & Governance Planning

DAY FOUR

Refine and Validate

- ❑ Break Out Teams Continue
- ❑ 12:30PM Teams Brief and Integrate Results
- ❑ Develop Rough Draft Huddle Board
- ❑ 2:00PM Review Leadership Brief
- ❑ 3:00PM Brief Leadership

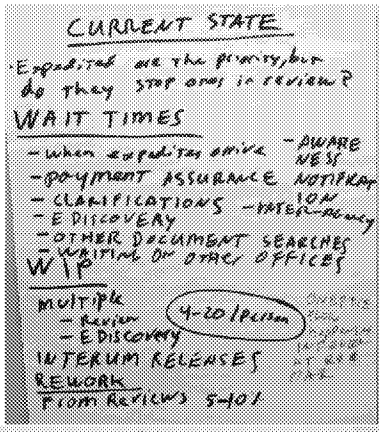
Approve & Implement

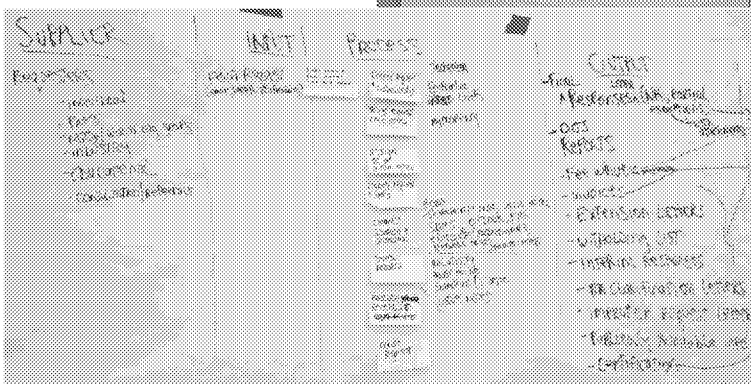
- ❑ POST EVENT
  - ❑ Implement, Train, Validate
  - ❑ Pilot non IT process improvements
  - ❑ Policy and manuals
  - ❑ Develop training
  - ❑ Implement IT changes iteratively with complex process changes
  - ❑ Validate
  - ❑ Establish Process Management/Governance
  - ❑ Brief results and develop success story

Afterward, the team will meet weekly to discuss progress

Current State Process

- Decentralized
- Inconsistent (23 variations)
- Hard to measure
- Pull – Push System
- Wait
  - Caused by Expedites
  - eDiscovery
  - Clarifications
  - Inter-Agency Reviews
  - Awareness Notification
- WIP
  - 4-20 per person
- Rework
  - 5 – 10% Estimate
- R8 and OAR have implemented One Piece Flow



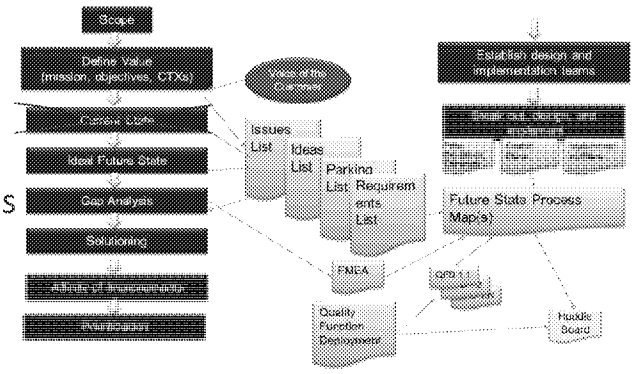


17

Insert a photo of the current state process that the team developed. In cases where a process map was not developed include other products that represent your understanding of the current state, e.g. spaghetti diagram, photos, CSM, etc.

Analysis

- A strategic end to end analysis to discover the full spectrum of problems and solutions
- A top down and bottom up System analysis and design approach was used
- We Developed:
  - 4 Performance Goals
  - 68 Critical to Success Factors
  - >75 Issues
  - >35 Ideas
  - 13 Problem Statements
  - 16 Solutions/Recommendations
  - 8 Quick Wins

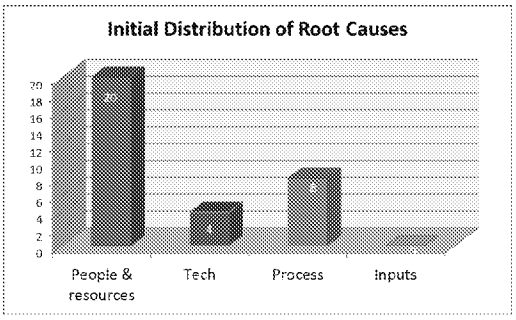


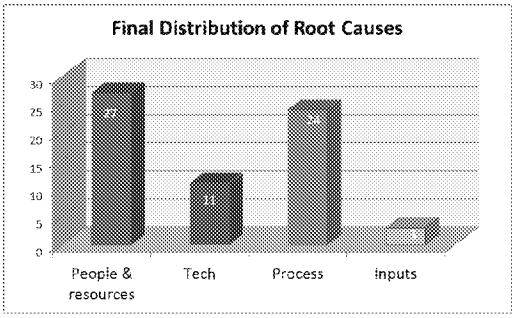
Provide a high level overview of the various types of waste eliminated (DOWNTIME) and the process used to identify and eliminate the waste, whether it be spaghetti diagrams, SIPOC, pareto, 5-why, fishbone, 5S, or other type of tool.

16

Analysis (cont.)

- Analysis shows a high number, but balanced portfolio of issues and concerns





Like the lead in a good story, introduce the key findings up front. Early exposure to results gets to the Sponsor's WIFM (what's in it for me) and may illicit a reaction, e.g. the Sponsor may nod in agreement or otherwise. This exposure can provide verbal and non-verbal feedback to help guide where the team can provide emphasis throughout the presentation.

Big Ideas

- Make all non legal emails public by default
- Improve and centralize input, intake, and triage to assign properly and enable rapid review – standardize across EPA
- Implement an automated analysis of key attributes in requests
  - Allow rapid response to certain types: My Property, Previous Request, Improper Request, Publicly Available
- Re-engineer the way reviews are conducted and provide authority needed to assign and get the job done quickly – standardize across EPA
- Create a FOIA Community of Practice to drive continuous improvement of personnel and processes
  - Process review and management
  - Share best practices
  - Train on new systems functionality
  - Celebrate victories
- Implement a robust cross system records management and search capability to drastically reduce the time spent searching for information/documents and reduce risk of litigation

Ideal FOIA Construct

GOALS Critical To Success	Consistently Meet Statutory Deadlines and Minimize Response Times	Minimize Lawsuits and Appeals	Consistent Accurate Response	Optimize Impact on Overall EPA Resources
Process				
Actionable Requests	9			9
Negotiate by Day 20	9	9		9
Handle Similar Requests in a Similar Way	9	9	9	9
Internal Transparency	9		9	9
Responsive in a Usable Format				
Responsive in a Preferred Format				
Easy Way to Find Previous Releases	9		9	9
Knowledge of How EPA Documents Things				
Conduct a Reasonable Search	9	9	9	9
Generate Required Reports				
Rapid Management Approval	9	9	9	9

Why These Solutions

FOIA Process - TOP QFD

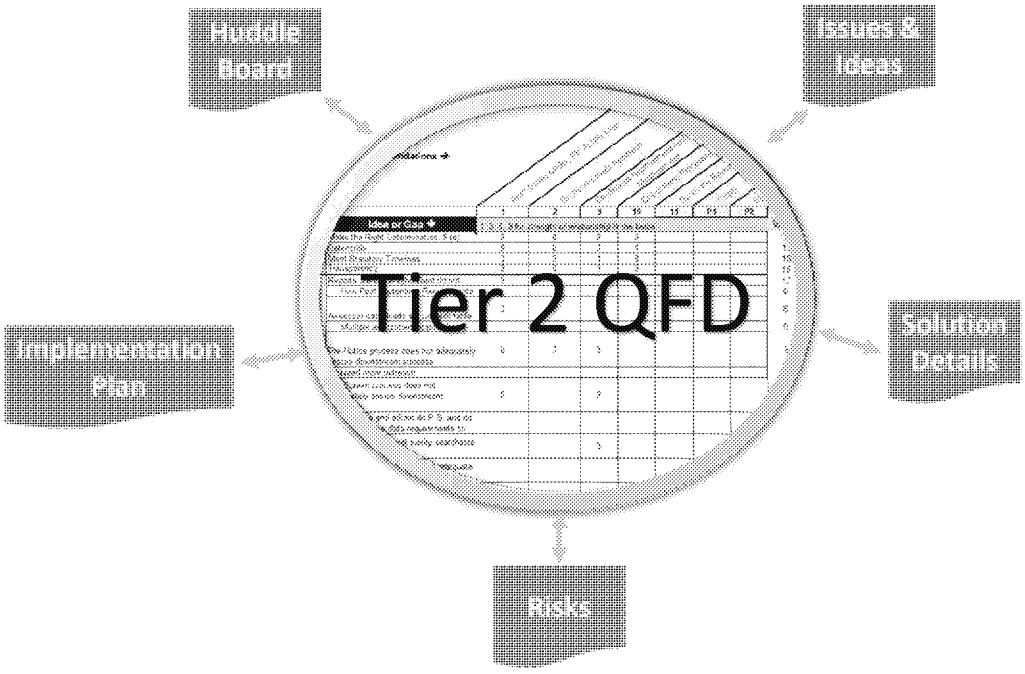
	Recommendations →	Votes	1. Improve Quality	2. Incorporate Industrial Systems	3. Improve Records Management	4. Improve Staff Training	5. New Staff - Reduced Hiring	6. Improve Resources - Screen Sharing	7. Set Agency Wide Call or Visits Policy	8. Improve Investigative Services Program	9. Improve Search Process	10. Improve Search Process - Electronic	11. Improve Processing Process	12. Improve Processing Process - Electronic Redaction	13. Improve Authority Process	14. Change Culture	15. Improve Authority Process - Electronic Redaction	16. Improve Authority Process - Electronic Redaction - Automated Redaction	
	Idea or Gap ↓		Enter 1, 3, 5, 9 or leave blank for relationship between idea and goals																Weight
GOALS	Consistently Meet Statutory Deadlines and Minimize Response Times			9															9
	Reduce Lawsuits and Appeals																		9
	Consistent Accurate Response																		9
	Optimize Impact on Overall EPA Resources																		9
PROBLEM AREAS	The FOIA request process is inconsistent across the EPA and is heavily reliant upon the people from end to end, resulting in mistakes, inaccuracies, delays, increased legal risk, difficult in management and tracking, and inhibits optimization of overall EPA resources.	12	9	9	9	3	9	9	1	9	9	9	3	3	3	9			94
	The agency FOIA related technologies are either underutilized or not integrated, resulting in processing delays, inconsistent reviews, inefficient use of staff time, and redundant work efforts.	11	3	3	3	9					9	9	9	9		3			57
	responsibility, an unwillingness to spend money on required technology, and fear of requests and requesters leading to poor work product, missed deadlines, demoralization, lack of trust and respect for FOIA and personnel and archaic systems technology.	10	1					3		3	3	3			9	3			35
	Lack of adequately trained and knowledgeable personnel leads to improper and delayed assignments, incorrect work product, and demoralization.	9	1									9			3	1	9		23
	Lack of clear roles and responsibilities results in duplication of effort, lack of coordination and prioritization, delays arising from the need to resolve disputes/clarify responsibilities, failure to accept and complete assignment, and unfinished work.	8	3					1		3		1			3	9			20
	Lack of FOIA resources (i.e. money, people, and time) result in delays, inconsistencies, inability to hire specialized personnel, an inability to buy and deploy adequate technology, staff demoralization, and lack of public trust.	5	3	3	3	9	3		9		9	9							48
	FOIAonline features are not user friendly resulting in low/no quality data inputs (e.g., time, comms, billing costs, admin record, etc.).	4				1	9					9	9	9					37
	The record review process requires multi-levels and routines resulting in missed deadlines, reduced public trust, and both increased legal risk and staff waiting.	1		1	3	3	3	9	9	9	3	1	1		9				50
	Because EPA does not own FOIAonline, all enhancements/changes must go through a change control board resulting in the EPA's inability to adjust its process to make improvements.	0											3	3					6
	sometimes prompted by Administrator comments resulting in more complex cases, a higher burden on resources, increased risk, extended cycle times, and decreased morale.	0	1		1		3		3										8
	The assigned staff are not adequately demonstrating time and cost resulting in an underestimate of resources dedicated to FOIA processing and insufficient fee charging.	0									3		3	3	3	1		9	22
	Lack of standard methods to communicate with requestors results in mismanaged expectations, delays, resource misallocation, legal risk, and poor public perception.	0	9	3			9				3		3	3		1			31
	FOIAonline software is geared only for DOI annual reporting, preventing EPA from collecting, tracking, and data analysis and learning regarding its own process.	0					3						9	9					21
	Records management systems are underutilized and staff email practices generate excessive emails, resulting in increased records searches, need for review resources, legal risk, missing deadlines, and inconsistencies.	0	1	3	9	3			3			1	3	3					26
	Sum of Problems		156	[illegible]	[illegible]	187	1[illegible]	156	68	1[illegible]	261	18	172	[illegible]	177	261	81	3	0

Break Out Teams (Optional where appropriate)

- Form, Intake, Triage
- Collection & Review
- Authority via Policy
- Technology

Assignment	Process Phases 1 & 2	Process Phases 3 & 4	Authority Via Policy	Technology	
	Form, Intake, Triage	Collection & Review			
Group #					Floaters
Facilitator	Sieber	Angeline			
Members	Jessica	Jonathan	Stephanie	Joan	Laura
	Lynn	Gretchen	Jennifer	Peter	
	Larry	Lisa	Wendy	Tim	
	Victoria	Brian		Alan	

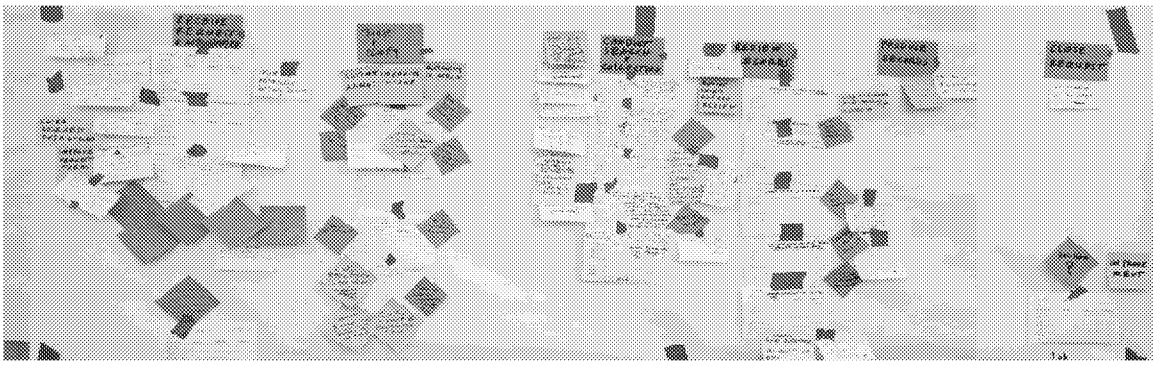
Break Out Team Process



Process Teams

VICTORIA CLARKE & GRETCHEN BUSTERUD

Future State Process Map

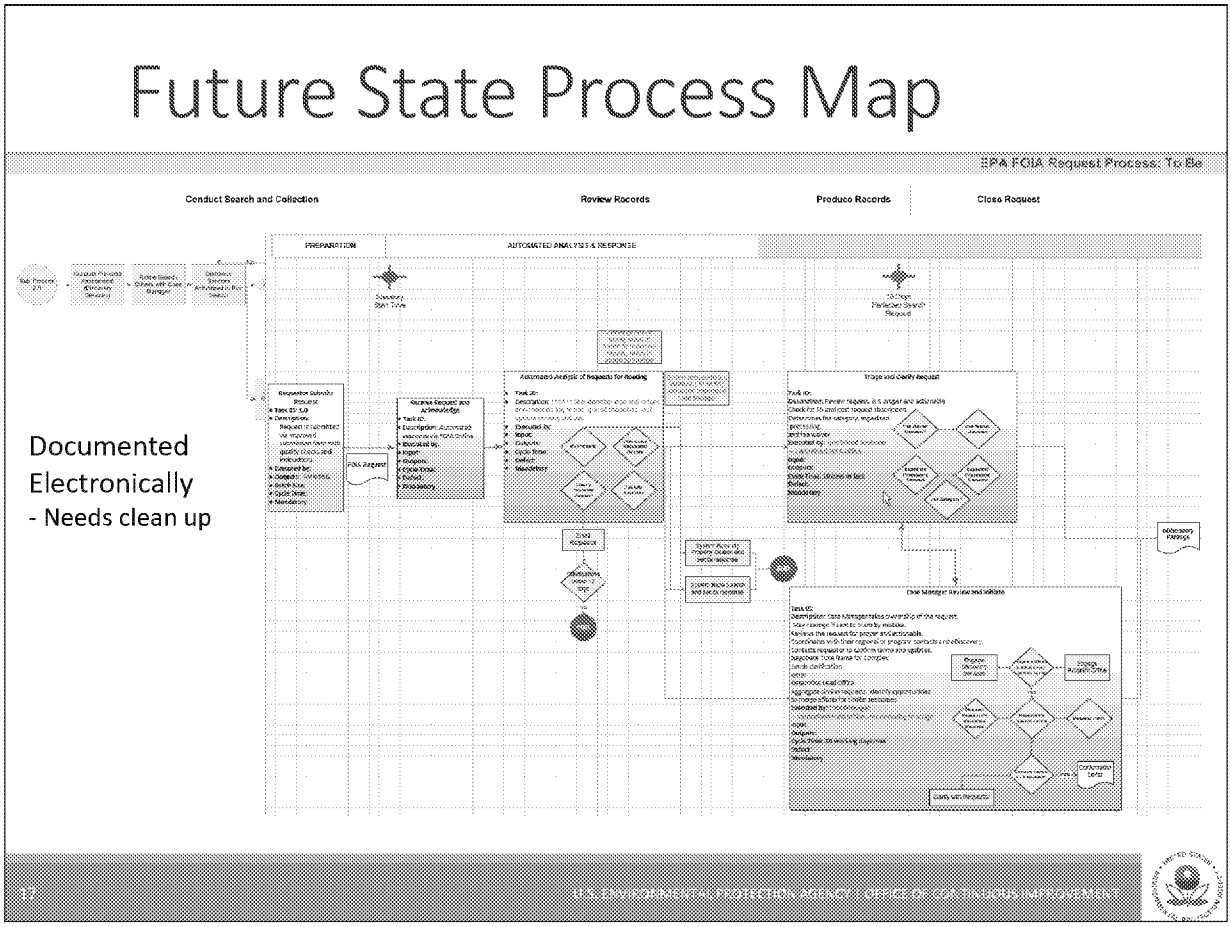


- Automated Front End
- Centralized Intake
- Streamlined Reviews
- Interim Deadlines

- Rapid Response to Many Requests
- Significantly reduced workload
- Improve ability to meet deadlines
- Reduction of queues / WIP

20

Insert a photo of the future state process that the team developed.



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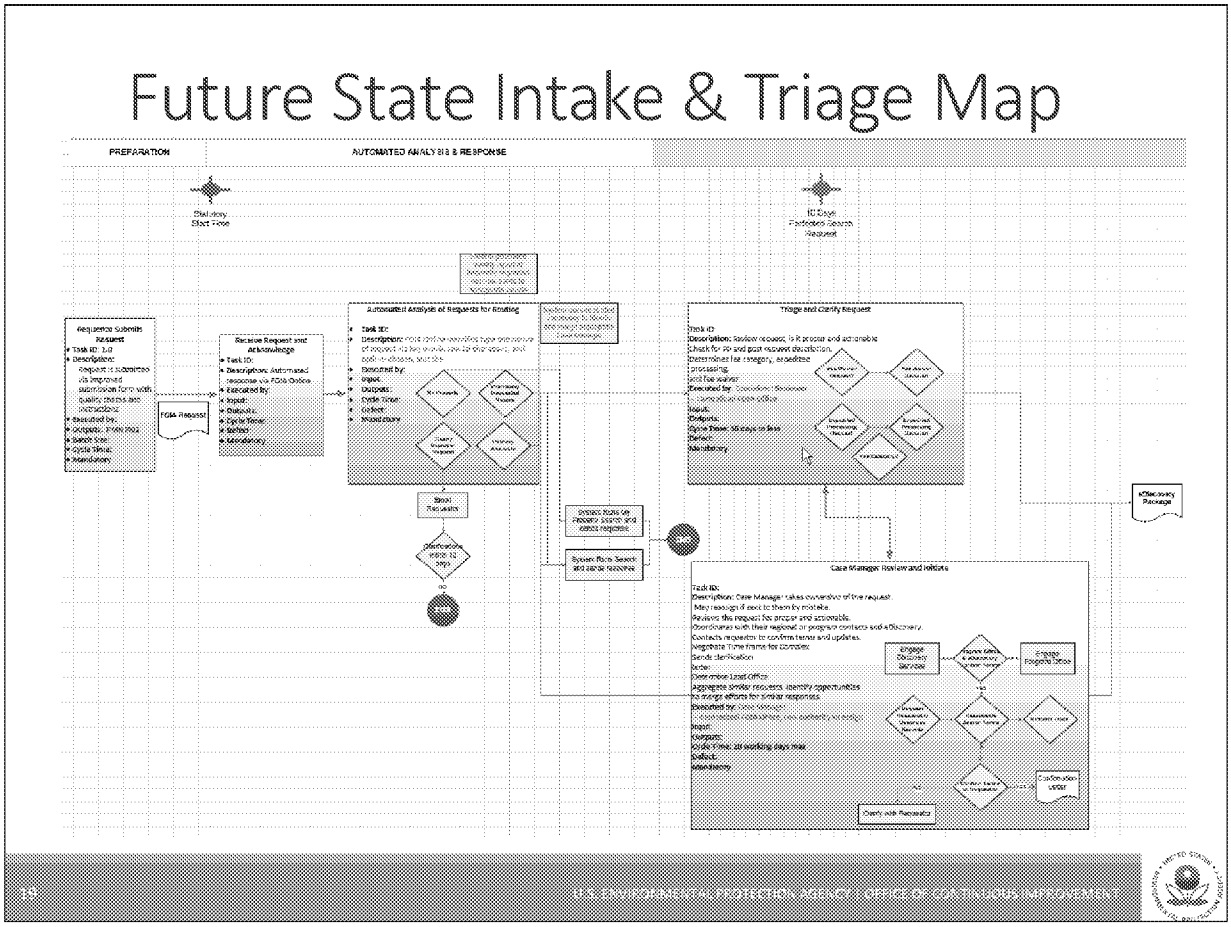
Insert a photo of the future state process that the team developed.

Process Changes – Intake & Triage

- Improve Intake Form
  - Drop downs
  - Key words
- Implement Automated Analysis and Response
  - My Property
  - Publicly Available
  - Previously Requested
- Centralize Intake responsibility and leverage new authority
- Identify FOIA Task Force Members
  - Embed and support crisis response
- Receive Daily Press Briefings

List the process changes and improvements that the team accomplished during the event. Use multiple slides as needed.

Examples:
Created a standard work checklist
Eliminated unnecessary approvals
Trained staff on the new process to coordinate permit and enforcement reviews
Developed a spreadsheet to visually track the process status



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Insert a photo of the future state process that the team developed.

Intake & Triage Details

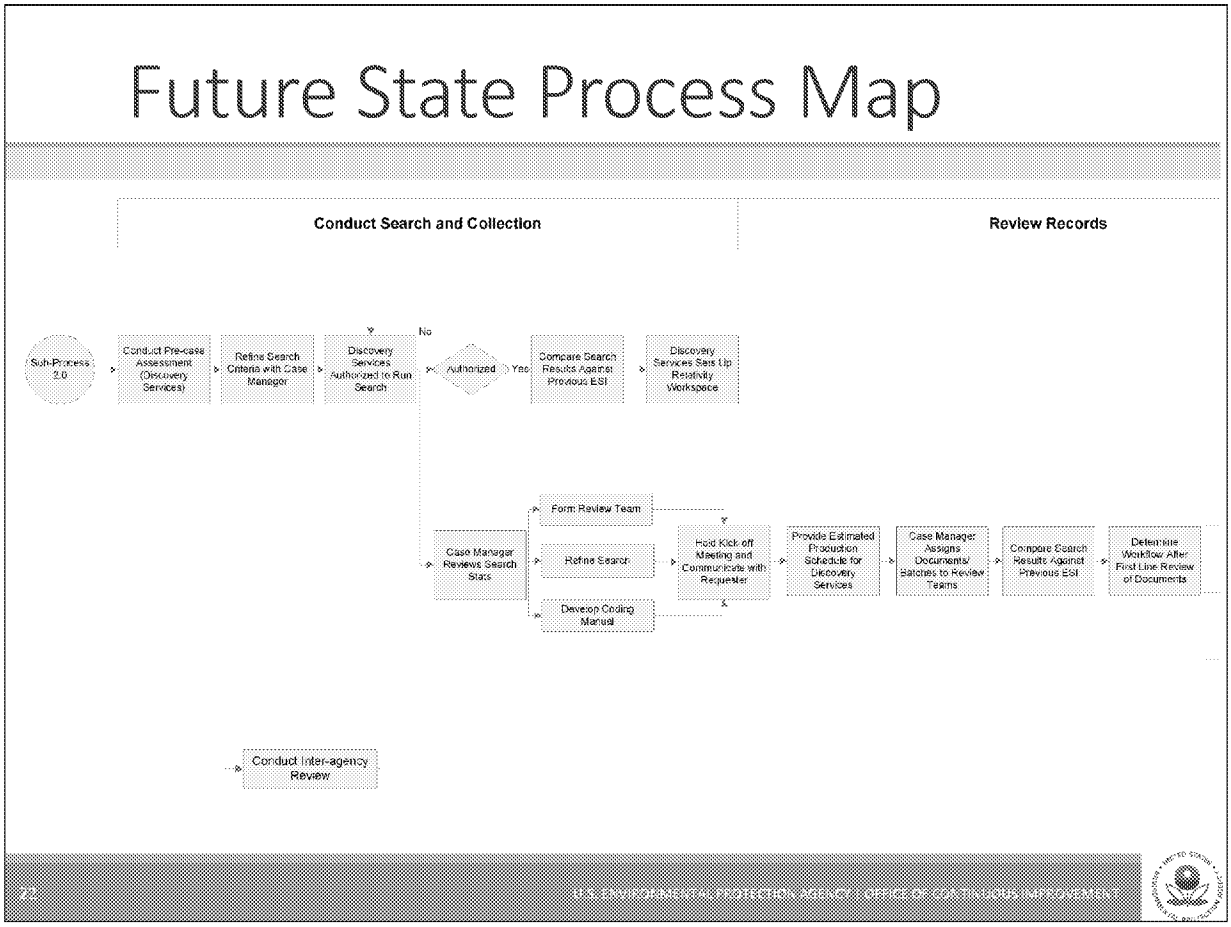
ID	RECOMMENDATION	DESCRIPTION/ CONTRIBUTING IDEAS
1	**1. Improve Intake**	Centralize intake into a single national office Control ability to assign requests in FOIA online Substantive acknowledgement vs. form acknowledgement Automated responses for MyProperty, Previous, and Publicly Availble Automated response for improper request - Clarify what expedited process means - review for same and similar requests - method to identify which requests are likely to be repeated (e.g. news related) - Communicate with requestor up front - Be proactive in outreach to regular requestors - Program Office makes simple or complex decision - Create Exceptional Track - Assign right number of capable people to the centralized FOIA Office - Create structure databases for internet portals for self searching - Making sure the frequently requested records are available to be searched online, provide current hot requests on FOIA Online - automatically. - Proactively release records that we know are going to be requested - Identify the delinquent fee paying requestors
	Idenitfy FOIA Special Task Force personnel for special situations	- Assign to emergency response teams from day one to begin preparing expected FOIA requests and managing rapid FOIA responses / postings
	FOIA receive daily press briefings	Receive daily press briefing so we have SA on what is coming and likely to be FOIA
2	**2. Implement Automated Analysis**	
5	**5. New Online Request Form**	One online avenue of entry for FOIA Requests, across the agency Improved with drop down and data boxes for specific selections that will drive processing decisions Provides instant feedback and/or launches automated analysis of information selected & entered to generate automated responses Screens quality of inputs (dates, keywords, office dropdown, focus areas)

Process Changes – Collection & Review

- Streamline Reviews
  - Establish Case Worker Model
  - Linkage between Exterro and FOIAonline and Relativity
  - Reorganize technology/FOIA group as a centralized unit
  - All large document production goes through Relativity/FOIAonline
- Streamline Inter-Agency Reviews
  - Establish a singular inter-agency review process

List the process changes and improvements that the team accomplished during the event. Use multiple slides as needed.

Examples:
Created a standard work checklist
Eliminated unnecessary approvals
Trained staff on the new process to coordinate permit and enforcement reviews
Developed a spreadsheet to visually track the process status



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Insert a photo of the future state process that the team developed.

Collection & Review Details

ID	RECOMMENDATION	DESCRIPTION/ CONTRIBUTING IDEAS
1	**1. Improve Intake**	Establish linkage with Discovery Services for pre-case analytics. Put processed documents into a discovery tool for future intake.
2	**2. Implement Automated Analysis**	Linkage between Extreo, FOIAonline, and Relativity required for producing public documents, tracking time/cost, documenting work practices, and producing records for FOIA. Systems need to establish interoperbability. Analyze data integrity and establish
3	**5. New Online Request Form**	
4	**6. Improve Awareness Review**	
5	**8. Improve Inter-agency Review Process**	
		Linkage between Exterro and FOIAonline and Relativity
		Develop technology to replicate already coded documents
		Reorganize technology/FOIA group as a centralized unit
		Align Authority with Reorganization
		Define and establish first line review corps
		Define and establish case managers
		Define and establish Relativity case admins
		Expand Discovery Services (e.g., search, collection, processing, and Relativity)
		Establish one point of intake of a perfected FOIA
		Institutionalize case management from beginning to end
16	**9. Improve review process**	
		Provide metrics for tracking workflow, cycle time, and fees
		Case manager identifies expedited requests
		Establish a singular inter-agency review process
		Streamline the review process
		All large document production goes through Relativity/FOIAonline (e.g., information requests, Congressionals, etc.)

Authority Team

WENDY SCHUMACHER

Authority Changes

- Update FOIA Regulations
- Add FOIA to PARS
- Update FOIA Policy; Guidance and SOPs reflecting increase in authority and clarifying roles.
- Update 1-30 to delegate signature authority
- Roll out standard naming convention for records and correspondence
- Enable Culture Change
  - Identify and fund training and professional enrichment opportunities for FOIA professionals
  - Reclassify all FOIA professionals to 0306 series
  - Awards for FOIA work

Authority Solutions

ID	RECOMMENDATION	DESCRIPTION/CONTRIBUTING IDEAS	EXPECTED BENEFIT	APPROVED	OWNER	Do Free Box
14	**14. Improve Authority via Policy**	Policy changes focused on increasing the authority of FOIA professionals and clarifying roles and responsibilities within the agency.	Improved processing time, consistent responses which optimizes fewer agency resources.		Senior Management - OGC and OA	All
14.1	**Update FOIA Regulations**	Publish draft FOIA Regulations, address comments; and promulgate final Regulation	Improves internal and external understanding of roles and responsibilities.		OGC	All
14.2	**Add FOIA to PARS**	Making employees accountable for FOIA responsibilities as a key function and not other duties as assigned.	Management will provide employees with time and resources to complete FOIA work. Employees will be accountable for their FOIA work.		OARM - HR	Collect and Review Records
14.3	**Update FOIA Policy; Guidance and SOPs reflecting increase in authority and clarifying roles.**	Updating FOIA policy, guidance, and SOPs to increase consistency in responses and allow decision making at the appropriate level by the proper organization	Clearer and faster resolution of intra-agency disputes leading to more timely and complete responses using appropriate resources.		OGC	All
14.4	**Update 1-30 to delegate signature authority**	Revise the delegation of authority to FOIA Officer for letters for which there are limited disposition (e.g., withdrawn, extensions, refer to web sources for records)	Faster processing times and better allocation of resource		OGC	Produce Records
14.6	**Roll out standard naming convention for records and correspondence**	Basic naming convention for records and correspondence with sufficient elements to distinguish the record type and disposition	Fewer requests because previously released records are more searchable. Faster uploads into FOIAonline which improves data quality.		OEI	Collect, Review and Release Records
15	**15. Culture Change**	Elevating and professionalizing FOIA work so that it is regarded across the agency as mission critical	Elevated employee morale; appropriate level of resources, and improved compliance with the FOIA which is recognized as mission critical work		EPA Senior Managers	All
15.1	**Identify and fund training and professional enrichment opportunities for FOIA professionals**	Ensure FOIA professionals have the training to successfully complete FOIA work in the evolving technology and legal world.	Increased confidence and competency of FOIA professionals to result in		EPA Senior Managers	All
15.2	**Reclassify all FOIA professionals to 0306 series**	Professionalizing the workforce with appropriate grade and skills to complete the work required and reflect the complexity of the FOIA.	Increased confidence and competency of FOIA professionals to result in higher quality work.		OARM - HR	All

Technology Team

TIM CRAWFORD

Technology Summary

- Implement Automated Analysis
- Improve Records Management
- Improve Searchability
- New Online Request Form
- Improve FOIAonline Functionality/Interoperability
- Implement FOIAonline Tweaks

Technology Solutions

ID	RECOMMENDATION	DESCRIPTION/CONTRIBUTING IDEAS	EXPECTED BENEFIT
2	**2. Implement Automated Analysis**	Update FOIAonline and Relativity Software to provide cradle to grave analysis	Automate to the extent possible
3	**3. Improve Records Management**	Expand and require minimum metadata for records uploaded in FO to improve search ability and reuse	improve reuse and reduce duplicative effort
4	**4. Improve Searchability**	FOIAonline--require minimum metadata to be entered to better describe and categorize requests and records to improve searchability.	
		eDisco-maximize tools in 9.5 release including training	
5	**5. New Online Request Form**	Expand request form to include additional information to capture and help direct the requester to provide sufficient information to properly describe records being sought	reduce reachback to requester, improve request assignment
11	**11. Improve FOIAonline Functionality/Interoperability**	Create interoperability between FOIAonline and eDisco	
12	**12. Implement FOIAonline Tweaks**	Expand the customization of agency specific metrics sufficient to manage their unique FOIA program	
		Create community to review enhancement requests and prioritize functional enhancements	
		Change the default the tab does return to page one after opening a doc	
		consider eSignature	
		Standardize comment boxes with dropdowns	
		Add flags for litigation and awareness review	
		Add checkboxes to indicate review sequence so you know when the final review is complete	
		Create the ability to add exemptions at the point of record upload	
16	**16. Implement FOIA Resource and Utilization and Billing Report**	Maximize the workflow tracking tools in eDiscovery to capture time spent searching and reviewing docs and have that information sent to the case file in FOIAonline	

Improvement Actions: Next Steps

#	Assigned Date	Action to be Taken	Action Owner	Due Date	Percent Complete				Completed Date
1		**Leadership Approval for Initiatives**			25	50	75	100	
2		**Conduct Intake and Triage Event**			25	50	75	100	
3		**Conduct Collection and Review Event**			25	50	75	100	
		Complete Awareness Notification Improvement			25	50	75	100	
4		**Enhance FOIA Community of Practice**			25	50	75	100	
5		**Assess Automation Technologies and Approaches to Implementation**			25	50	75	100	
6		**Obtain Automation Resources and Implement**			25	50	75	100	
7		**Implement, Train, Validate Improvements from Events**			25	50	75	100	
8		**Implement Measurement and Visual Management**			25	50	75	100	
9		**Conduct a data analysis and FOIA analytics improvement initiative**			25	50	75	100	
10		**Revise policies and procedures to reflect appropriate FOIA authority**			25	50	75	100	

Describe the steps that the team will take to implement the process. Include the name of the person who will be responsible for leading each implementation item. If you cannot fit the full implementation plan on the slide, you could select key actions to provide an example of how the changes will be implemented, or present the actions that will be implemented first. See the Breakthrough Project A3 for more details on how to show the status of each action.

Action Item Examples:

Modify the IT Tracking System for use in property inventory
Purchase new equipment
Create a checklist of tasks to complete the annual property inventory
Communicate with colleagues in EPA and state offices about the new process
Conduct a briefing for staff not at the Lean event on the new process

Anticipated Improvements

Pending decisions and subsequent improvement events/project

Process Metric (units)	Current State	Future State	Percent Change
Lead Time (business days)			
Processing Time (hours or days)			
Number of Process Steps			
Percent Complete & Accurate			

Note: Results reflect anticipated improvements after implementation is complete.

Fill in the current and future state metrics as appropriate for your project. Note the percent change (with up/down arrows, if desired) to show how the future state will be an improvement over the current state.
Example Process Metrics and Definitions:
*Lead time (business days): Lead time is the total time from the start of the process to the end point of delivering a service to a customer, including wait time. The start and end of the process are defined in the pre-event planning stage when you determine your project scope: beginning with the "trigger" that sets the process in motion and ending with the final step in the process.
Example: For a permitting process, lead time would be the time between when a permit application is submitted and when a customer receives a permit (e.g., 50 business days).
*Processing time (hours or days): This metric measures the time to complete the process, excluding wait time. Processing Time, like Lead Time, is an effective metric for telling the improvement story for projects focused on reducing time-related waste in their processes.
Example: The number of working hours when permit reviewers actually review the permit application (e.g., 20 hours), excluding the time when it is waiting to be reviewed.
*Number of Process Steps: Every process is comprised of a series of tasks or activities, each considered to be a "step" in the process. Improving a process commonly changes the overall number of process steps. Often, the number of process steps decreases as a result of Lean, but increases are possible if steps are added to improve product quality or reduce variation.
*Percent Complete and Accurate (%C&A): Percent of occurrences that work in process (e.g., a permit application) released to the next step does not require a downstream customer to make corrections or request information that should have been provided initially. For each process step, ask what percentage of the product/work-in-process is complete and accurate the first time it is received. This is the %C&A. Multiply those values together to get the rolling %C&A for the entire process. For more information, see the Lean Metrics Guide: http://www.epa.gov/lean/government/pdf/Metrics_guide.pdf

Future State Metrics and Control Plan

What to measure	How to measure	Target	How frequent to measure	Control Limit – Trigger point to take action	Person Responsible	Reaction Plan if Control Limit is exceeded

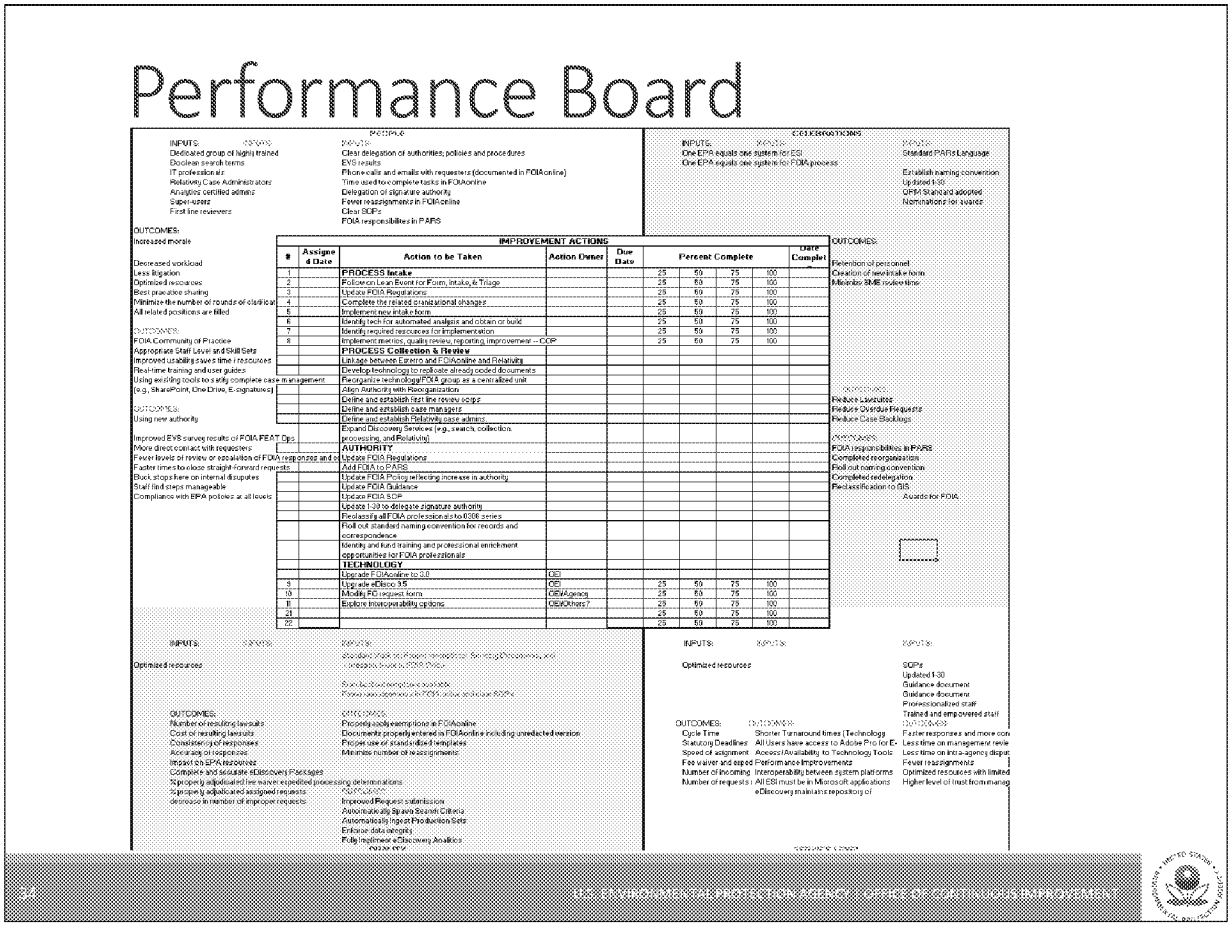
Provide either a description, chart, graph, or other means of tracking the performance of the process post-event and have a plan of action if the performance degrades. Include the indicator that will be monitored, source of data/how it will be measured, the target value of the metric, the frequency of measurement (no less frequently than monthly), the undesired measurement point where there's commitment to take a corrective action, what action will be taken, and the person responsible.

Standard Process

- Describe the format and means by which the process will be standardized.

Include the format and content for the standard work that will result from the event, along with the means by which it will be taught to and used by those who perform the work (e.g., Training Within Industry, or some other form of standard work documentation and training).

24



Illustrate how the team will track the improvements expected as a result of the event. Provide either a description or example of the chart, graph, or other means of tracking the performance of the process post-event. Ideally, include a photo of the Performance Huddle Board and describe the components of the Board and how it will be used (how often will huddle meetings be held and who will attend).

24

Flow Board

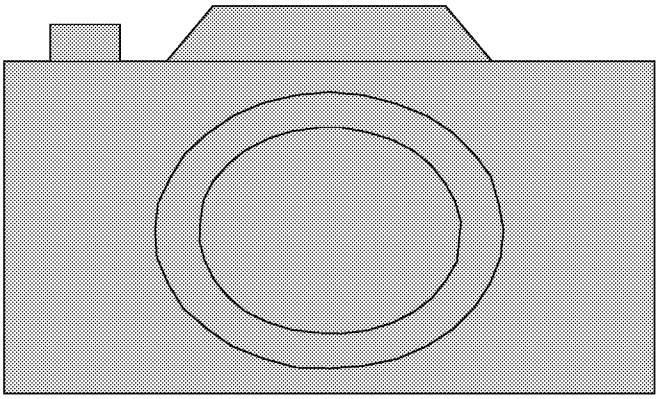


Photo of Flow Huddle Board

Include a photo of the process Flow Huddle Board and describe the components of the Board and how it will be used (e.g., how often reviewed and by whom).

24

Issues/Obstacles (Optional where appropriate)

- Staff availability for implementation
- Staff availability for outreach
- IT Systems Issues
- Acceptability of the Exposure Levels Approach
- Willingness to delegate decisions and signatures
- Willingness to eliminate Focus Meeting

Lessons Learned

- List the team's lessons learned and reflections about the Lean process.

Describe lessons learned about the lean process.
Examples:
Event pre-work is key to the success of the event
The size of the scope is important, because there wasn't enough time to discuss everything during the event
It makes a big difference when senior managers actively support the event

Questions and Discussion

Thank You!

Parking Lot [Optional]

List any issues that the team did not have time to discuss, but that may be relevant for future efforts.

Message

From: Blake, Wendy [Blake.Wendy@epa.gov]
Sent: 3/4/2018 4:28:49 AM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]; Burke, Marcella [burke.marcella@epa.gov]
CC: Miller, Kevin [Miller.Kevin@epa.gov]; Hammitt, Jennifer [Hammitt.Jennifer@epa.gov]; Kelly, Lynn [Kelly.Lynn@epa.gov]; Dolph, Becky [Dolph.Becky@epa.gov]
Subject: RE: Continuation of FOIA Discussion Meeting
Attachments: FOIA notes for Monday meeting.docx

Kevin,

Some of the folks on my team and Becky brainstormed a bit in response to the questions you pose below. Attached are some notes to potentially guide our discussion at 1 pm on Monday with Matt.

Let me know your thoughts. I will be at Ex. 6 Personal Privacy (PP) much of tomorrow, but can talk between 12 and 3, and after 5 pm.

Thanks,

Wendy

Wendy L. Blake
Associate General Counsel
General Law Office
Office of General Counsel
U.S. Environmental Protection Agency
phone: (202) 564-1821
fax: (202) 564-5433

From: Minoli, Kevin
Sent: Tuesday, February 27, 2018 7:02 PM
To: Blake, Wendy <Blake.Wendy@epa.gov>; Dolph, Becky <Dolph.Becky@epa.gov>; Veney, Carla <Veney.Carla@epa.gov>; Patrick, Monique <Patrick.Monique@epa.gov>
Cc: Monson, Mahri <Monson.Mahri@epa.gov>; Burke, Marcella <burke.marcella@epa.gov>
Subject: Continuation of FOIA Discussion Meeting

Ex. 5 AC/DP

Kevin S. Minoli
Principal Deputy General Counsel
Office of General Counsel

US Environmental Protection Agency
Main Office Line: 202-564-8064

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Message

From: Walker, Denise [Walker.Denise@epa.gov]
Sent: 8/24/2018 10:18:06 PM
To: Walker, Denise [Walker.Denise@epa.gov]; Sweeney, Edward [Sweeney.Edward@epa.gov]; Griffo, Shannon [Griffo.Shannon@epa.gov]; Gardner, Allison [Gardner.Allison@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; Blake, Wendy [Blake.Wendy@epa.gov]; Schwarz, Matthew [Schwarz.Matthew@epa.gov]; Moumbleaux, Joan [moumbleaux.joan@epa.gov]; Lubetsky, Jonathan [Lubetsky.Jonathan@epa.gov]
CC: Epp, Timothy [Epp.Timothy@epa.gov]
Subject: RE: Walker, Denise has shared 'OGC FOIA Brainstorming Accountability Ideas Draft 08242018'
Attachments: Evaluation of EPA FOIA Program Feb 12 2016 - Report by IEc.pdf

Adding Tim and also attaching the commissioned EPA FOIA evaluation that IEc completed in 2016.

Joan flagged this for me and noted that the recommendations from this 2016 report are relevant to a 2018 plan. Joan highlights the Executive Summary for us.

Have a great weekend!

Denise

Denise A. Walker
U.S. Environmental Protection Agency
Acting Assistant Director, OGC FOIA Expert Assistance Team
Washington, D.C. | 7308A WJCN
Office: 202-564-6520
EPA Cell: 202-816-9872

Have a FOIA question? Try here first!

From: Walker, Denise <no-reply@sharepointonline.com>
Sent: Friday, August 24, 2018 5:23 PM
To: Sweeney, Edward <sweeney.edward@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>; Gardner, Allison <Gardner.Allison@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>; Schwarz, Matthew <Schwarz.Matthew@epa.gov>; Moumbleaux, Joan <moumbleaux.joan@epa.gov>; Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>
Cc: Walker, Denise <Walker.Denise@epa.gov>
Subject: Walker, Denise has shared 'OGC FOIA Brainstorming Accountability Ideas Draft 08242018'

All: Here are the notes from the August 13 FOIA Accountability Brainstorming Session. I'll set up another meeting for us to discuss. Please add to or edit this document as you deem appropriate/ useful.

Open OGC FOIA Brainstorming Accountability Ideas Draft 08242018.docx

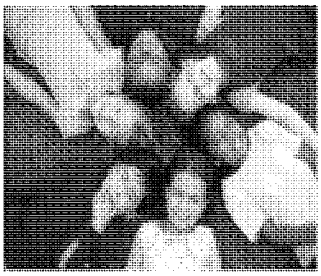
See more related to Walker, Denise in Delve.

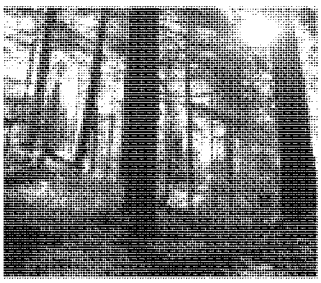
Get the SharePoint mobile app!

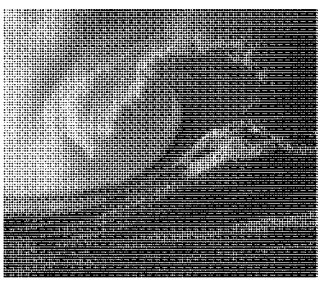
United States Environmental Protection Agency

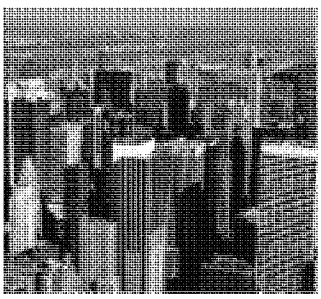
Office of Environmental Information
Office of Policy

February 2016
EPA-XXX-X-XX-XXX









Evaluation of EPA's FOIA Program

Final Report

February 12, 2016

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EXECUTIVE SUMMARY

The U.S. Environmental Protection Agency (EPA) has worked continuously to strengthen its Freedom of Information Act (FOIA) program; this evaluation is a continuation of these improvement efforts. Senior managers in EPA's Office of Environmental Information (OEI) initiated this evaluation to examine EPA's current implementation of FOIA and identify opportunities to improve the program. This study assesses the program's current effectiveness and efficiency, and provides recommendations to inform strategic planning decisions.

This study was funded by OEI's Office of Program Management (OPM) and Office of Information Collection (OIC). It was co-managed by OPM and the Office of Policy's Evaluation Support Division. EPA contracted with Industrial Economics, Incorporated (IEc) to provide evaluation support.

EVALUATION QUESTIONS

This evaluation was guided by nine questions:

Questions on Current Implementation of the FOIA Program

1. How have the updated Agency-wide FOIA policy and procedures (September 2014) affected FOIA implementation in program offices and regions to date?
2. What are the major differences in organization-specific FOIA procedures (March 31, 2015) across program offices and regions?
    a. What factors explain these differences?
3. How does the performance of EPA's FOIA program compare to the performance of other, comparable federal agencies?
4. What are the major differences in FOIA program structure and practices across EPA's regions and program offices?
    a. How do these differences affect employee accountability to the FOIA program?
    b. How do these differences affect consistency in the Agency's FOIA processes and responses to FOIA requests?

Prospective Questions on Improving the FOIA Program

5. What best practices could EPA adopt to ensure accountability in the Agency's FOIA processes and responses to FOIA requests?

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6. What best practices could EPA adopt to ensure consistency in the Agency's FOIA processes and responses to FOIA requests?
7. What opportunities, if any, exist for EPA to streamline its FOIA processes?
8. How might changes to the program's organizational structure and/or the adoption of new technologies affect EPA's efforts to ensure the accountability, consistency, and efficiency of the Agency's FOIA program?
    a. In what ways could EPA centralize its FOIA program (e.g., centralizing receipt to processing of FOIA requests, enhancing FOIAonline capabilities to centrally track and manage FOIA requests, adopting a centralized program structure in regions/program offices, etc.)?
    b. In what ways could EPA use technology to efficiently manage and process FOIA requests, and/or be proactive in making information publicly available?
    c. What are the potential benefits and costs of each of the approaches listed in sub-questions a and b, including but not limited to potential impacts on: total personnel required, human resources reallocation requirements, hardware/software costs, training costs, FOIA processing times, strategic coordination of FOIA requests, and litigation costs?
9. How can EPA most effectively leverage the FOIA Expert Assistance Team (FEAT) within the context of ongoing FOIA improvement efforts?

METHODOLOGY

IEc used multiple data sources to answer the evaluation questions. Key sources of information included: 1) document review of reports, policies and procedures, FOIA Lean outputs, and previous evaluations; 2) 45 interview sessions with 55 individuals, including personnel from across the Agency, one interview at the Department of Justice (DOJ), and one at the Occupational Safety and Health Administration (OSHA); and 3) a brief online survey administered to EPA staff with FOIA responsibilities, which resulted in 429 useable survey completions.

Two additional data methods – process maps and case studies – leveraged existing data and built on new data collections. These additional data methods synthesize qualitative and/or quantitative data; the process maps illustrate EPA's FOIA processes, and the case studies identify best practices in FOIA operations.

Thus, the analysis combines findings from across data sources, using an approach known as "mixed-methods evaluation." Mixed-methods evaluation increases confidence in the evaluation findings if a finding is validated with more than one source. Conversely, this approach can highlight contradictions across data sources and indicate areas that require additional investigation. In general, our findings and conclusions are validated by multiple sources.

CONCLUSIONS

The evaluation concludes that:

1. **Overall, the Agency is following the updated FOIA policy and procedures, but many respondents expressed concern about the sign-off requirement.** One of the most significant changes affecting offices/regions is the requirement for authorized officials to sign off on FOIA responses. Some offices had instituted this requirement prior to the updated Agency-wide policy and procedures, but most had not. The sign-off requirement is intended to ensure that all FOIA responses are reviewed by senior-level managers; however, interviews and survey responses indicate this requirement causes delays in the process, with one region noting that it negated the benefits of the region's previous streamlining efforts. IEc's review of the Agency-wide FOIA policy and procedures also indicates a lack of clarity regarding division directors' authority to sign the response letter sent to requesters. The current procedures allow division directors the authority to issue initial determinations only with a formal re-delegation of authority from administrators or equivalents. However interviews suggest that formal delegation of authority may not be standard across the Agency.

2. **With very few exceptions, there is little variation in the written FOIA procedures across offices/regions.** However, office/regional procedures across the Agency do differ in some ways – mostly in terms of the staff position assigned with implementing steps in the process, rather than the actual process steps. The degree of centralization of the FOIA program in an office or region helps explain this difference in the written procedures.

3. **EPA's FOIA program has a strong reputation among federal agencies; however, EPA's backlog has been growing since 2013.** EPA has seen recent improvement in its speed of processing simple requests. EPA also typically ranks high in utilization of technology, largely due to the Agency's leadership in FOIAonline. However, EPA had a higher percentage of requests backlogged (approximately 16 percent) at the end of FY 2014 than other federal agencies that had a similar or higher volume of FOIA requests. EPA's backlog has also been growing over the past several years. This is due, in part but not entirely, to the Department of Justice (DOJ)'s clarification of the definition of "backlog" to include instances in which requesters agree to an extension beyond the 20-day window.

4. **Although written procedures show little variation across the Agency, actual implementation of the FOIA program differs across offices and regions.** The process maps (see Appendix F) indicate multiple areas where the process differs across the Agency, including: who has primary responsibility for collection and review of potentially responsive records, and the process of communicating with requesters. Another major difference is how offices/regions collect data to respond to FOIA requests – e.g., technology uses and knowledge, use and access of FOIAonline, use of OEI eDiscovery services, FEAT involvement, and use of

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contractor support. Each of these differences can affect accountability and/or consistency. Program performance, as indicated by total and percent backlog and FOIA response time, also varies across offices and regions.

5. **EPA has the opportunity to adopt best practices that may increase accountability in the Agency's FOIA program.** Interviews, survey responses, and literature suggest that EPA could increase accountability by: increasing management support and involvement to ensure that staff respond to FOIA tasks; clarifying the role and responsibilities for each step in the FOIA process; and professionalizing the FOIA Coordinator and Officer roles as Government Information Specialists.

6. **EPA could adopt and/or expand its use of practices to ensure greater consistency in processing and responding to FOIA requests.** The evaluation identified many possibilities to improve consistency; these include: enhancing the functionality and user-friendliness of FOIAonline; improving records management; resolving issues with Outlook e-mail searches; strengthening FOIA staff expertise and limiting turnover; providing training to meet specific needs; clarifying the fee and fee waiver process; using standard templates to ensure consistency in FOIA communication and responses to FOIA requests; developing a list of technologies and databases that are currently available to assist with FOIA requests; and exploring options to centralize the FOIA program within program offices/regions.

7. **Potential streamlining efforts could address a range of inefficiencies in the FOIA process.** The process maps reflect multiple areas where there are delays in the process– particularly the process for fee waivers, handling large FOIA requests, collecting and reviewing potentially responsive records, coordinating with the eDiscovery team, use of FOIA online, and the review and sign-off process. Survey and interview responses indicate these delays may be due, in-part, to confusion about FOIA policy and procedures. Streamlining measures might include: clarifying roles and responsibilities, particularly for large FOIA requests; increasing the use of proactive disclosure; enhancing the review and sign-off process in FOIAonline; improving records management; adapting relevant Lean findings from individual offices/regions to other parts of the Agency; leveraging currently existing technology; and, where appropriate, adopting a centralized office/regional FOIA program.

8. **Organizational changes and technology improvements have the potential to significantly improve EPA's FOIA program; however, the potential benefits need to be weighed against the costs.** Various parts of the Agency are considering changes to the program's organizational structure (i.e., centralization). Overall, 42 percent of survey respondents were in favor of greater centralization within their own office/region, while 23 percent of respondents favored centralization within a core FOIA group at Headquarters. Benefits of centralization may include: increased accountability, greater expertise and specialized knowledge, enhanced intra-Agency FOIA communication and

consistency, improved customer service, and allowing subject matter experts (SMEs) to focus on their program activities. Potential costs of centralization include: perceived difficulty or infeasibility of dedicating additional FTEs to FOIA, the need for ongoing SME involvement, loss of control for subject matter offices, and costs associated with improved records management.

The evaluation identified several opportunities to enhance EPA's use of technology to strengthen the FOIA program. However, greater access to technology is not in itself sufficient to improve the process, unless technology users have the knowledge and skills required to use the technology effectively. FOIAonline improvements, OEI eDiscovery search improvements, improved hardware, and enhanced training on how to use these resources could improve consistency and significantly reduce the staff time dedicated to responding to FOIA requests. Although these technology improvements would reduce costs over time through efficiency gains, each of these solutions would require upfront expenditures.

9. **EPA can leverage the FEAT by further clarifying the FEAT's role and responsibilities, and by increasing communication and coordination between the National FOIA Office and FEAT.** Feedback obtained from interviews indicates that the FEAT has been helpful in improving the quality and timeliness of EPA's responses to large and complex FOIA requests and could continue to play this role. Clarifying the respective roles and responsibilities of the FEAT and the National FOIA Office, maintaining open and productive communication, and coordinating messaging and information dissemination would help to further integrate the FEAT into EPA's ongoing FOIA improvement efforts.

RECOMMENDATIONS

Based on the conclusions, IEc offers the following recommendations to strengthen EPA's FOIA program:

- **Increase intra-Agency coordination, communication, and accountability.** *(Evaluation Questions 4,5,6,7,9)*
    - Increase coordination and communication among the FOIA program, FEAT, and eDiscovery.
    - Increase communication between the eDiscovery team and eDiscovery requesters.
    - Develop standard operating procedures (SOPs) for processing large FOIA requests with multiple offices/regions.
    - Regularly track and report FOIA task assignments.
- **Leverage available technology and improve FOIAonline.** *(Evaluation Questions 4,6,7,8)*
    - Develop a technology inventory on available technology, accessibility of the technology, and technology expertise.

- Work across the Agency to develop SOPs for central records storage.
- Provide step-by-step guidance for using FOIAonline.
- Improve FOIAonline functionality: allow batch uploads, create a better feedback mechanism to obtain information on user interface issues, enhance efforts that increase authorized officials' use of FOIAonline, and continue to explore the use of digital signatures.[1]
- Use FOIAonline to provide additional real-time metrics on FOIA performance.

- **Clarify FOIA policy and procedures.** *(Evaluation Questions 1,4,5,7)*
  - Use office/regional SOPs to specify roles and designate responsibilities for completing FOIA tasks (e.g., identify the specific job duties for FOIA Coordinators vs. SMEs).
  - Clarify division director authorization for initial determinations.
  - Professionalize the FOIA Coordinator and FOIA Officer positions.
- **Support the assessment and implementation of centralization options in program offices and regions.** *(Evaluation Questions 6,7,8)*
  - Encourage program offices and regions to examine the benefits and costs of centralization in their respective office or region.
  - Provide support and share knowledge with offices/regions moving towards centralization.
  - Combine a centralized FOIA system with improved centralized records management across the Agency.
- **Leverage and learn from Lean experiences.** *(Evaluation Question 7)*
  - Leverage and adapt lessons from previous FOIA Lean events to strengthen FOIA processes in other parts of the Agency and to focus future Lean events.

[1] Examples of user interface issues are discussed in Chapter 3 in response to evaluation question six. The National FOIA Officer indicates that batch upload functionality is under development for FOIAs processed using Relativity. The National FOIA Office is also currently working with OGC to allow for the use of digital signatures.

CHAPTER 1 | INTRODUCTION

OVERVIEW OF THE REPORT

This report presents the results of the evaluation of the U.S. Environmental Protection Agency (EPA)'s Freedom of Information Act (FOIA) program. This introduction describes the context for the evaluation and the questions that the evaluation was designed to answer. The report then presents the evaluation methodology, findings for each evaluation question, and the overall conclusions and recommendations.

The report is organized as follows:

- Chapter 1 provides an overview of the FOIA program, the purpose and objectives of the evaluation, and the questions that guided this effort.
- Chapter 2 discusses the data sources and approaches used to answer the evaluation questions, and addresses the strengths and limitations of the methodology.
- Chapter 3 presents the findings for each evaluation question.
- Chapter 4 summarizes the evaluation's overall conclusions and recommendations for the FOIA program.

A series of appendices follows the main body of the report. Appendix A provides a bibliography of literature consulted for the evaluation. Appendix B provides a summary of previous and ongoing FOIA improvement efforts. Appendix C lists the individuals who were interviewed for the evaluation, and Appendix D contains the interview guides. The survey instrument is attached in Appendix E. The process maps are shown in Appendix F. Appendices G and H contain case studies about the Occupational Safety and Health Administration (OSHA)'s FOIA program, and EPA's FOIA-related Lean events, respectively. Appendix I contains they survey output tables

BACKGROUND AND HISTORY OF EPA'S FOIA PROGRAM

Enacted by Congress in 1966 and amended several times,[2] FOIA embodies "the people's right to know" about the government's operations and activities.[3] FOIA gives any requester the right to obtain access to federal agency records, unless such records are protected by any of the nine exemptions or three law enforcement exclusions contained in the law. The U.S. Department of Justice (DOJ) is charged with "encouraging agency

[2] 5 U.S.C. § 552. Congress amended FOIA in 1974, 1976, 1986, 1996, 2007, and 2010.

[3] Ginsberg, Wendy. The Freedom of Information Act (FOIA): Background, Legislation, and Policy Issues. Congressional Research Service. January 23, 2014.

compliance" with FOIA;[4] however, every federal executive agency is responsible for administering the FOIA program within its own organization.

EPA's FOIA program is highly decentralized across the Agency's National FOIA Office, 13 headquarters program offices, and 10 regions. Located in the Office of Environmental Information (OEI), the National FOIA Office oversees and coordinates EPA's FOIA program. The National FOIA Office manages EPA's FOIA tracking and management system, provides FOIA training, prepares Annual FOIA Reports for DOJ, issues determinations on fee waiver and expedited processing requests, and develops FOIA procedures, policies, and guidance. The public may submit a FOIA request to the National FOIA Office (which in turn forwards the request to the appropriate program offices or regions to respond), or directly to any of EPA's regions. FOIA Coordinators (headquarters program offices) and FOIA Officers (regions) route FOIA requests to subject matter experts (SMEs) who communicate with the requester and locate relevant records. The Office of General Counsel (OGC) (and the Legal Counsel for the Office of Inspector General, for OIG requests and appeals) provides legal advice on FOIA matters, issues final decisions on FOIA appeals and confidentiality determinations, and serves as co-counsel with DOJ in FOIA litigation.

EPA has worked continuously to strengthen its FOIA program. In 2001, then-Administrator Whitman established a task force to review EPA's administration of FOIA. The task force findings and recommendations addressed issues concerning accountability, centralization, policies, regulations, and guidance. Since 2001, EPA has taken steps that have significantly reduced its backlog of FOIA requests. In 2010, then-Deputy Administrator Perciasepe created a new workgroup to develop recommendations for ensuring the effectiveness, efficiency, and transparency of EPA's FOIA program. EPA has implemented some workgroup recommendations and is in the process of implementing others. In October 2012, EPA launched FOIAonline – an electronic portal that allows the public to submit FOIA requests, track their status, communicate with the processing agency, search previous requests, access previously released documents, and file appeals. Although developed by EPA, FOIAonline is used by several federal agencies.

While improvement efforts have been underway for years, recent developments have prompted managers to take a fresh look at the Agency's implementation of FOIA. Two studies conducted in 2014 by the Office of Inspector General (OIG) identified areas in which EPA could strengthen the consistency and clarity of its FOIA processes.[5] In September 2014, OEI issued updated FOIA policy and procedures documents, which required program offices and regions to develop or revise their own (organization-specific) FOIA procedures by March 31, 2015.

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[4] Ibid.

[5] U.S. Environmental Protection Agency Office of Inspector General, Briefing Report: Review of EPA's Process to Release Information Under the Freedom of Information Act. Report No. 14-P-0262, May 16, 2014; and No Indications of Bias Found in a Sample of Freedom of Information Act Fee Waiver Decisions But the EPA Could Improve Its Process. Report No. 14-P-0319. July 16, 2014.

Recently, various parts of the Agency have taken steps to streamline their FOIA processes. The Office of Air (OAR), Region 3, Region 7, and Region 10 have conducted Lean, Kaizen, or process improvement events focusing on FOIA, and an Agency-wide FOIA Technology Subgroup is reviewing technologies that could improve the efficiency of the FOIA program. In addition, EPA senior managers have established a FOIA Expert Assistance Team (FEAT) within OGC to provide assistance with particularly complex and/or multi-office FOIA requests.

EVALUATION PURPOSE, INTENDED USES, AUDIENCES, AND SCOPE

Senior managers in OEI initiated this evaluation to examine EPA's current implementation of FOIA and identify additional opportunities to improve the program in the future. This evaluation assesses the program's current effectiveness and efficiency, and provides recommendations to inform strategic planning decisions.

This study was funded by OEI's Office of Program Management (OPM) and Office of Information Collection (OIC). It was co-managed by OPM and the Office of Policy's Evaluation Support Division. EPA contracted with Industrial Economics, Incorporated (IEc) to provide evaluation support.

Multiple audiences may benefit from the evaluation results. Primary audiences include senior managers in OEI and the EPA's National FOIA Officer. Additional audiences include the OGC; senior managers and FOIA Coordinators and FOIA Officers in offices/regions; and other EPA staff involved in responding to FOIA requests. Finally, due to the leadership role among federal agencies that EPA has taken with FOIAonline, other federal FOIA programs are also a potential audience for the evaluation results.

As the first step in the program evaluation process, IEc conducted a scoping task to understand previous and ongoing FOIA improvement efforts at EPA, and clarify how the current study can build on these existing efforts.

Based on the results of IEc's scoping research, and feedback from OIC, the evaluation focuses on the following topics:

- Effectiveness and efficiency of EPA's FOIA program;
- Intended or realized effects of the updated Agency-wide FOIA policy and procedures;
- Comparison of new/updated organization-specific FOIA procedures developed by EPA program offices and regions;
- Comparison of EPA's FOIA practices and results across regions and program offices, and with other federal agencies (i.e., benchmarking);
- Opportunities to strengthen, standardize, and/or streamline FOIA processes;

- Technologies that could ensure the efficiency and consistency[6] of FOIA processes or mechanisms to address the public's information needs without FOIA requests (e.g., through FOIAonline or EPA's website);
- Costs and benefits of centralized versus decentralized FOIA processing systems;
- Organizational or structural changes that could enhance the accountability[7] of managers and staff in responding to FOIA requests; and
- Opportunities to strategically leverage the FEAT in light of other ongoing improvement efforts.

Given the need to prioritize evaluation time and resources, and feedback provided during the scoping interviews, this evaluation did not address certain topics. Specifically, IEc did not evaluate the implementation of any new FOIA regulations; the 2011 workgroup provided detailed recommendations in this area, but new regulations have not yet been adopted. IEc also did not evaluate the management of confidential business information (CBI), which is a related but distinct issue relative to EPA's basic FOIA process. The 2011 workgroup addressed CBI issues, but progress in implementing the recommendations for CBI has been limited. Finally, while the evaluation focused on technology solutions that could directly benefit the FOIA process, it did not comprehensively assess EPA's technology improvement efforts (e.g., the eDiscovery Workgroup).

EVALUATION QUESTIONS

This evaluation examined two types of evaluation questions: Questions 1-4 assessed the current status of EPA's FOIA program; and Questions 5-9 explored future opportunities for strengthening the program. The prospective questions (Questions 5-9) yielded mostly qualitative information on potential benefits and costs of proposed changes, but did not measure actual changes.

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[6] IEc defines consistency (1) within and (2) across program offices/regions. (1) A program office/region is internally consistent if it follows the same or similar process for responding to the same or similar FOIA request. In other words, the selection of search parameters; determinations about potentially responsive records; decisions about what information to release, redact, or withhold; contacts between the Agency and the requester; and the level of management review - as well as the information ultimately released to the public - should be the same or similar, regardless of the individuals who process and respond to the request. (2) Program offices and regions are consistent across one another if they respond to the same or similar FOIA request in the same or similar manner. For example, two program offices/regions that have similar records (number and type) pertaining to a particular FOIA request should provide a similar response to the request.

[7] IEc defines accountability in terms of (1) how staff and mid-level managers respond to FOIA requests, and (2) the extent to which senior managers commit to meeting, and achieve, the Agency's FOIA goals. (1) Staff and mid-level managers are accountable to the FOIA program if they devote due time and attention to their FOIA responsibilities, follow the stipulated FOIA processes and procedures in their program office/region, respond to internal requests from senior managers and/or the National FOIA Office within a reasonable timeframe, and provide responses that are comprehensive and of acceptable quality. (2) Senior managers demonstrate accountability to the FOIA program if they devote the time, staff, and resources required to achieve the Agency's FOIA goals and statutory requirements and to reduce the backlog of FOIA requests; clearly delineate staff roles and responsibilities for processing FOIA requests; assign well-qualified/experienced staff to work on FOIA; and provide adequate oversight and supervision to ensure that FOIA responsibilities are being fulfilled.

Questions on Current Implementation of the FOIA Program

1. How have the updated Agency-wide FOIA policy and procedures (September 2014) affected FOIA implementation in program offices and regions to date?
2. What are the major differences in organization-specific FOIA procedures (March 31, 2015) across program offices and regions?
    a. What factors explain these differences?
3. How does the performance of EPA's FOIA program compare to the performance of other, comparable federal agencies?
4. What are the major differences in FOIA program structure and practices across EPA's regions and program offices?
    a. How do these differences affect employee accountability to the FOIA program?
    b. How do these differences affect consistency in the Agency's FOIA processes and responses to FOIA requests?

Prospective Questions on Improving the FOIA Program

5. What best practices could EPA adopt to ensure accountability in the Agency's FOIA processes and responses to FOIA requests?
6. What best practices could EPA adopt to ensure consistency in the Agency's FOIA processes and responses to FOIA requests?
7. What opportunities, if any, exist for EPA to streamline its FOIA processes?
8. How might changes to the program's organizational structure and/or the adoption of new technologies affect EPA's efforts to ensure the accountability, consistency, and efficiency of the Agency's FOIA program?
    a. In what ways could EPA centralize its FOIA program (e.g., centralizing receipt to processing of FOIA requests, enhancing FOIAonline capabilities to centrally track and manage FOIA requests, adopting a centralized program structure in regions/program offices, etc.)?
    b. In what ways could EPA use technology to efficiently manage and process FOIA requests, and/or be proactive in making information publicly available?
    c. What are the potential benefits and costs of each of the approaches listed in sub-questions a and b, including but not limited to potential impacts on: total personnel required, human resources reallocation requirements, hardware/software costs, training costs, FOIA processing times, strategic coordination of FOIA requests, and litigation costs?
9. How can EPA most effectively leverage the FOIA Expert Assistance Team (FEAT) within the context of ongoing FOIA improvement efforts?

CHAPTER 2 | METHODOLOGY AND APPROACH

IEc used multiple data sources to answer the evaluation questions. Key sources of information included: 1) document review of reports, policies and procedures, FOIA Lean outputs, and previous evaluations; 2) 45 interview sessions with 55 individuals, including personnel from across the Agency, one interview at DOJ, and one at OSHA; and 3) a brief online survey of EPA staff with FOIA responsibilities resulting in 429 useable survey responses.

Two additional data methods, process maps and case studies, leveraged existing data and built on new data collections. These additional data methods synthesize qualitative and/or quantitative data. The process maps summarize EPA's FOIA processes, and the case studies highlight differences and identify best practices in FOIA operations.

Thus, the analysis combines findings from across data sources, using an approach known as "mixed-methods evaluation." Mixed-methods evaluation increases confidence in the evaluation findings if a finding is validated with more than one source. Conversely, this approach can highlight contradictions across data sources and indicate areas that require additional investigation. In general, our findings and conclusions are validated by multiple sources.

This chapter describes each data source, explains how IEc used each source to answer the evaluation questions, and notes the strengths and limitations of the methodology.

EXISTING DATA SOURCES

IEc used already existing quantitative and qualitative data sources for this evaluation. FOIA.gov and Annual FOIA Reports contain quantitative data IEc used to extract and analyze trends in program metrics. Available literature, including federal FOIA policy documents, EPA FOIA policies and procedures, previous EPA FOIA evaluations, and EPA FOIA workgroup reports provided contextual information for understanding the current status of EPA's FOIA program. Finally, outputs from recent FOIA-related Lean efforts provided information on streamlining opportunities that may be broadly applicable across EPA.

Benchmarking Data

FOIA.gov and federal agency Annual FOIA Reports provided a rich source of existing data on FOIA implementation across the federal government. Using these existing data, IEc conducted benchmarking across a selection of federal agencies. IEc used existing data to select federal agencies for benchmarking by looking at agency size, volume of FOIA requests received, and ratio of complex to simple requests. IEc also benchmarked

trends in FOIA performance across EPA regions and headquarters to understand internal EPA FOIA performance trends.

IEc's benchmarking of EPA offices/regions compared general trends in program performance and explored correlations between program performance and program structure (e.g., centralization). Existing data were available for regions and headquarters offices in aggregate from 2001 to 2014. IEc had access to disaggregated regional data from 2001-2014, but only had access to data on individual headquarters offices for 2013 and 2014. Therefore, IEc was not able to examine FOIA program performance for *individual* headquarters offices over time. IEc examined trends over time using aggregated (consolidated) headquarters data and disaggregated regional data.

IEc examined FOIA program performance using a number of metrics, but focused primarily on the following:

- Total number of backlogged[8] requests;
- Backlogged requests as a percent of total requests;
- Average cost (dollars spent and personnel[9]) per request; and
- Request response time (average number of days) for responding to simple requests.

Literature Review

IEc reviewed relevant online resources and documents on the history, goals, and status of EPA's FOIA program. In addition, IEc conducted a targeted literature search to identify additional evaluations, studies, and analyses of the program, both for EPA and other federal agencies. Appendix A provides a complete bibliography of the literature reviewed.

Key documents include:

- *Freedom of Information Act Workgroup Report* (June 2011);
- *OIG's Briefing Report: Review of EPA's Process to Release Information Under the Freedom of Information Act* (May 2014);
- *OIG's No Indications of Bias Found in Sample of Freedom of Information Act Fee Waiver Decisions But the EPA Could Improve Its Process* (July 2014);
- *Freedom of Information Act Policy* (September 2014);

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[8] The *U.S. Environmental Protection Agency Chief FOIA Officer Report for 2013 (March 2013- March 2014)*, explains that prior to FY 2013, EPA did not count a request as backlogged if an extension was granted by the requester. For FY 2013 and on, any request pending at the EPA for more than 20 working days, or an additional 10 days (if taken for unusual circumstances) is considered backlogged, regardless of a granted extension. IEc took into account this definitional change during our analyses.

[9] Prior to the launch of FOIAonline in October 2012, FOIA personnel data were estimated across regions based on guidance from the National FOIA Office. IEc examined trends in number of full-time FOIA employees and number of equivalent full-time FOIA employees over time. Our analysis indicated variability in reported values for equivalent full-time employees that may indicate data inconsistency.

- *Procedures for Responding to Freedom of Information Act Requests* (September 2014);
- *FOIA Expert Assistance Team presentation* (November 2014);
- Organization-specific FOIA procedures submitted by EPA offices and regions (March 2015);
- FOIA information, documents, and links on EPA's website; and
- Lean and process improvement outputs for OAR, Region 3, Region 7, and Region 10 (see the Lean section below).

IEc conducted an in-depth review of selected documents and synthesized existing information on steps that EPA could take to improve FOIA processes and workflow, strengthen accountability, and ensure consistency in the Agency's responses to FOIA requests.

To gather additional information about FOIA best management practices, IEc reviewed documentation for other federal agencies that have enhanced their FOIA performance in recent years (e.g., reduced their backlog, decreased processing time, etc.). For example, IEc reviewed Annual FOIA Reports that EPA and other federal agencies submitted to DOJ to identify steps agencies are taking to improve their FOIA programs. IEc reviewed Center for Effective Government scorecards, the National Security Archive's FOIA administration audits, FOIA Advisory Committee[10] reports, and related publications to identify information on best management practices. IEc focused on best practices that 1) have not been implemented by EPA, and 2) have not been deemed infeasible by OEI (see Appendix B).

Lean Outputs

As discussed above, OAR, Region 3, Region 7, and Region 10 recently conducted Lean, Kaizen, or other process improvement events to simplify their FOIA processes and procedures (for simplicity, IEc refers to these collectively as "Lean events"). IEc used the materials associated with these events to identify opportunities for streamlining the FOIA process, as well as best practices to strengthen accountability and improve consistency.[11]

IEc received materials from OAR, Region 3, Region 7, and Region 10. A brief summary of the materials follows:

- **OAR:** IEc reviewed the "report-out" for the Lean event that OAR conducted in January 2015. The goal of this event was to streamline the process and reduce the

[10] The FOIA Advisory Committee was established through the 2013 Open Government National Action Plan and is comprised of both government and non-government members working to improve FOIA implementation. Government members include representatives from EPA, Department of Labor, Department of State, Department of Homeland Security, Department of Defense, and others. Although these agencies may not all be comparable to EPA based on the volume of FOIA requests or organizational structures, they may provide useful insights and best practices for EPA's consideration. https://ogis.archives.gov/foia-advisory-committee.htm.

[11] See footnotes 5 and 6 for the definitions of consistency and accountability that IEc used for this evaluation.

time required to respond to FOIA and Congressional requests.[12] The team mapped and analyzed the current process to identify the causes of delays. This exercise suggested that decentralization, the increasing use of electronic communication, technology limitations, and the increasing complexity of requests contributed to delays in the process. The team specifically noted the difficulties in locating and managing responsive e-mail records (see above for discussion of the FOIA Technology Subgroup, which is working to address this issue). The team developed recommendations and a detailed action plan to address these issues.

- **Region 3:** The PowerPoint slide presentation for Region 3's FOIA Process Improvement Project[13] describes Region 3's current (as of September 2013) FOIA process, other regions' FOIA processes, major FOIA tasks, and FOIA response statistics. The slides also present ideas for "immediate fixes" and options to strengthen the region's FOIA processes. Region 3's project investigated how structural differences in FOIA programs across regions (e.g., centralized, decentralized, or hybrid structure) could affect differences in the time required to process and close FOIA requests.
- **Region 7:** Four documents from Region 7 related to their Kaizen event. First, the FOIA kickoff document describes the scope of the Kaizen event and provides selected data on FOIA requests.[14] The "customer" for the Kaizen event was the FOIA Officer; the goal was to provide the FOIA Officer with complete, legally defensible, and timely responses; reduce the number of steps in the process; and transition to the new National FOIA Office-directed procedures efficiently and effectively. Second, the FOIA Kaizen Report provides the results from the event, including a current-state process map, future-state process map, recommendations, key performance indicators, and an implementation plan.[15] Third, the Value Stream Map (VSM) shows a partial process map for the future state.[16] Finally, the FOIA Champion Report summarizes the status of the project after 90 days.[17] The report indicates that Region 7 has completed many of the implementation steps.
- **Region 10:** IEc reviewed an October 2014 status update from Region 10's Fall 2013 Lean workshop. This one-page document provides a brief summary of workshop outcomes and the new FOIA process, including: distinction between simple and complex FOIAs; clearly defined roles; new tool kit including standard operating procedures, template letters, and checklists; and improvements to electronic tools. The document also identifies remaining issues primarily based on

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[12] U.S. Environmental Protection Agency OAR/OGC/OEI/OCIR. Lean Event Report-Out: OAR Document Request Production (FOIA and Congressional Requests). January 9, 2015.

[13] EPA Region 3. *FOIA Process Improvement Project*. Planning and Analysis Branch. September 11, 2013.

[14] EPA Region 7. Process Excellence Project Pre-Kaizen Meeting: Region 7 FOIA Process. August 2014.

[15] EPA Region 7. Process Excellence Project Report Out: FOIA Process. Undated.

[16] EPA Region 7. *FOIA new VSM*. Undated.

[17] EPA Region 7. FOIA Process: Champions Meeting Update. Undated.

the need for additional FOIA Coordinator and Officer expertise and manager support.

As discussed below, IEc also interviewed the Lean event coordinators for three of these offices: OAR, Region 3, and Region 7.

NEW DATA COLLECTIONS

IEc used two primary data collection tools: 1) in-depth interviews with EPA personnel and select interviews at DOJ and OSHA, and 2) a brief online survey administered to EPA staff with FOIA responsibilities. Each data collection is described in more detail below.

Interviews

Interviews informed our answers to all of the evaluation questions. IEc conducted 45 interview sessions with 55 individuals, which we used to gather information, opinions, and input about the current FOIA program and ways to strengthen it. Specifically, IEc gathered information on:

- Changes in FOIA implementation in EPA program offices and regions following the updated Agency-wide FOIA policy and procedures (September 2014);
- Differences in organization-specific FOIA procedures developed by EPA program offices/regions (March 31, 2015), and reasons for these differences;
- EPA's FOIA performance and implementation relative to other federal agencies;
- Differences in FOIA program structure, practices, and performance across the Agency;
- Potential costs and benefits of centralizing the FOIA program (within each program/region, throughout EPA in the National FOIA Office, etc.);
- Technological approaches for managing FOIA requests (including analytics about requests and mechanisms to address the public's information needs without FOIA requests); and
- Role of the FEAT in context of ongoing improvement efforts.

IEc used the interviews to collect information on FOIA program structure within a particular office/region; obtain interviewees' perceptions of the impact of program structure on accountability and consistency; and to solicit feedback on: mechanisms for ensuring accountability and consistency, streamlining opportunities, existing and potential centralization options, and technologies for managing FOIA requests.

Interviewees included EPA FOIA Coordinators and Officers, a sample of individuals involved with FOIA from EPA offices of regional counsel, a sample of EPA staff with FOIA responsibilities, senior managers in OEI, FOIA litigation experts and/or a senior manager in OGC, the FOIA technology sub-group, Lean FOIA experts, FEAT personnel, a FOIA manager at OSHA, and a DOJ FOIA contact (regarding DOJ's general impressions about EPA's FOIA program, how EPA's FOIA performance compares to

other federal agencies, and general suggestions for agencies' FOIA programs). Exhibit 1 provides an overview of the interview categories and the number of interviews in each category.

Appendix C provides the full list of interviewees, the interview category, type (i.e., group vs. individual) and the interviewee's organization and title. Appendix D contains the interview guides for each interview type.

During the scoping interviews and initial literature review IEc noted organizations and individuals as potential interviewees. Based on the initial list, IEc worked with EPA to identify the names of particular individuals who are knowledgeable about EPA's FOIA program. Interviews reflect a purposive sample to ensure adequate representation across key EPA organizations. The interviews are not statistically representative, and IEc does not attempt to make statistical inferences about the FOIA program based on the results of the interviews.

EXHIBIT 1. INTERVIEWS

INTERVIEW CATEGORY	NO. OF INDIVIDUALS
EPA FOIA Coordinators and Officers*	28
Offices of Regional Counsel	6
EPA subject matter expert with FOIA responsibilities	5
Senior managers in OEI*	4
FOIA Technology Sub-group*	2
Lean FOIA experts	6
FEAT personnel*	2
FOIA manager at OSHA	1
DOJ representative familiar with EPA's FOIA program	1
Total	**55**

Note: (*) Two EPA FOIA Coordinators and Officers, two senior managers in OEI, two individuals in the FOIA Technology Sub-group, and one FEAT personnel participated in evaluation scoping interviews in addition to the in-depth interviews conducted during the implementation of the evaluation.

To ensure the transparency of the selection process and adequate representation across the Agency, IEc and EPA used the following interview selection criteria:

For EPA FOIA Coordinators and Officers:

- Representation of all regional EPA FOIA programs; and
- Representation of most headquarters offices.

For Offices of Regional Counsel:

- Counsel representing regions with updates to FOIA procedures that are unique;
- Counsel that the regional FOIA Officer has identified as particularly knowledgeable about key aspects of the FOIA process; or

- Counsel in regions where the counsel has more FOIA-related knowledge than the acting FOIA Officer.

For EPA subject matter experts:

- Participation in survey (see below) and willingness to be interviewed; and
- New, surprising, or insightful survey responses that offer new learning opportunities.

IEc interviewed senior managers at OEI knowledgeable about the FOIA program and able to provide insights on the new EPA policies and procedures. IEc also interviewed FOIA Technology Sub-group members previously interviewed during the scoping phase of this evaluation to gain additional information on FOIA-related technology. IEc also conducted interviews of Lean FOIA experts in OAR, Region 3, and Region 7. FEAT personnel interviews included the Acting FEAT Director and a FEAT attorney. IEc also interviewed a FOIA manager at the OSHA National Office, and a DOJ representative familiar with EPA's FOIA program.

IEc analyzed responses to each interview question to identify themes and summarize responses. IEc used qualitative analysis tools to code responses to open-ended questions, identified themes across interviews, and summarized the frequency with which each theme was raised.

Survey

IEc surveyed and received useable, complete responses from 429 EPA staff with FOIA responsibilities,[18] including subject matter experts, to collect information on the following topics:

- Intended or realized effects of the updated Agency-wide FOIA policy and procedures;
- Differences and similarities in the level and nature of responsibility for FOIA implementation across different offices and regions;
- Nature and extent of coordination to process FOIA requests and any frequent or common problems/frustrations;
- Time required to respond to FOIA requests, and the percent of overall time spent on FOIA versus other job responsibilities;
- Perceived importance of FOIA-related goals relative to other job responsibilities;
- Effects of technology on FOIA processing time;
- Access to technological resources to process FOIA requests; and
- Staff input on potential streamlining opportunities.

[18] 430 respondents completed the survey; however, one respondent made the following comment near the end of the survey: "I don't do enough regular FOIA work to know [what would make work on FOIA easier]. This survey mischaracterizes my usual FOIA involvement and is nearly impossible to answer accurately, including the responsibility to NOT answer some questions." Based on the respondent's comment, IEc excluded this respondent's answers from our analysis.

IEc used a web-based survey, which was faster and more convenient for respondents compared to a phone or paper survey, and was far more cost-effective. IEc programed the survey using Survey Monkey software. To reduce survey burden and reduce costs associated with data coding, the survey largely consisted of discrete choice questions with optional open text fields to allow respondents to elaborate on answers. The survey also employed skip logic, which allowed respondents to skip questions based on their answers to previous questions. This survey technique ensured that respondents only answered relevant questions. The survey instrument is located in Appendix E.

IEc distributed the survey to all EPA FOIAonline users. EPA maintains a comprehensive list of all EPA staff, contractors, and grantees that have responded to a FOIA request since FOIAonline was launched in October 2012. There are approximately 1,700 active users and an additional 500 inactive users registered with FOIAonline. Due to the requirements of the Paperwork Reduction Act,[19] IEc was unable to survey contractors and grantees. Therefore, IEc included a question at the beginning of the survey to screen out individuals who are not EPA employees. OEI distributed a letter announcing the survey, defining the eligibility criteria (i.e., employed by EPA), containing the survey link, and encouraging participation by eligible individuals.

For some data analyses, IEc grouped survey responses into two broad categories: respondents that self-identified as having a title in the FOIA program, and respondents that self-identified as not having an official title in the FOIA program.

ADDITIONAL METHODS

The process maps and case studies leveraged existing data and built on new data collections. These additional data methods synthesized qualitative and/or quantitative data; the process maps summarize EPA's FOIA process in practice, and the case studies highlight differences and identify best practices in FOIA operations. The remainder of this section describes the process maps and case studies in more detail.

Process Maps

IEc developed two general process maps that summarize EPA's FOIA program in a typical headquarters office and a typical region. IEc used two main sources to build the process maps: (1) policies, procedures, and statutory requirements that underlie EPA's FOIA processes, and (2) interviews with practitioners in EPA headquarters and regions to understand how the process is implemented. The process maps are located in Appendix F.

IEc used interviews to verify how the process is supposed to work and areas where inconsistencies and/or delays may occur. As part of this effort, IEc developed two preliminary, simple process maps to present to interviewees and prompt discussion on FOIA processes within a respective office or region. Based on interview responses, IEc revised the process maps. As a final product, IEc developed two generic process maps: one for headquarters offices and one for the regions.

[19] The Paperwork Reduction Act prohibits EPA and its contractors from asking the same questions of more than nine non-federal employees without obtaining approval from the Office of Management and Budget.

IEc used the process maps to describe the current process, including key differences across regions and program offices, and to identify where delays or inconsistences occur. IEc also used the process maps to describe how differences or changes in key parts of the process could affect accountability, consistency, and efficiency. IEc discusses opportunities for streamlining in the findings section of this report.

Case Studies

The case study is not a primary method, but a way of synthesizing information holistically to showcase differences and best practices in FOIA operations. IEc developed two case studies by drawing from information collected through the literature review, interviews, benchmarking, and the survey of EPA staff with FOIA responsibilities. One case study is on another federal agency – the Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA)'s FOIA program; and the other case study is on EPA Lean FOIA events.

Case Study of Another Federal Agency

IEc's criteria for selecting a federal agency for a case study included:

- Comparable structure to EPA;
- Comparable number of annual FOIA requests;
- Good track record of processing FOIA requests and avoiding backlogs, and/or recent improvement in FOIA processing over time; and
- Similar distribution of complex versus simple FOIA requests.[20]

Based on information collected, IEc identified OSHA as the best candidate for a FOIA case study due to its similar volume of FOIA requests, regulatory nature, and regional structure. [21]

OSHA's low numbers of backlogged requests, experience processing complex requests, and comparatively lower cost of FOIA activities – and the agency's similarity to EPA across multiple dimensions – suggested that a more in-depth review of OSHA could identify best management practices and/or initiatives relevant to EPA's FOIA program. See Appendix G for the OSHA case study.

Case Study of EPA Lean FOIA events

IEc also developed a case study summarizing and synthesizing lessons learned from EPA's FOIA-related Lean events in OAR, Region 3, Region 7, and Region 10 based on

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[20] A *simple request* is a FOIA request that an agency anticipates will involve a small volume of material or which will be able to be processed relatively quickly. A *complex request* is a FOIA request that an agency anticipates will involve a voluminous amount of material to review or will be time-consuming to process. (Freedom of Information Act Glossary: http://www.foia.gov/glossary.html)

[21] During our interview with OSHA, IEc sought to clarify the nature of requests that OSHA receives, and how this may affect OSHA's FOIA performance relative to EPA. The majority of OSHA's FOIA requests pertain to enforcement files in health and safety investigations, and most of these requests are narrow in scope. Despite these differences, the FOIA case study identifies some best practices that might be relevant to EPA, including: strong cross-agency communication, displays of management support, and overall support for FOIA staff.

the literature review, interview responses, and relevant survey responses. The Lean case study can be found in Appendix F.

ANALYTICAL APPROACH

IEc used a combination of quantitative and qualitative analyses to answer the evaluation questions. Quantitative methods included benchmarking using existing data from FOIA.gov and federal agency Annual FOIA reports, and a survey of EPA personnel with FOIA responsibilities. Qualitative data sources included the interviews, literature review, process maps, and case studies. The interviews provided important insights and context for interpreting the quantitative data and identifying improvement opportunities. As noted above, the case studies synthesized research collected through other methods.

Exhibit 2 provides a crosswalk of evaluation questions, data sources and methods, and IEc's analytical approach. The "Data Sources and Methods" columns indicate whether each source was of primary (★) or secondary (✓) importance for answering each evaluation question. The notes in the "Analytical Approach" column on the far right indicate how IEc used the data sources and methods to answer the evaluation questions. IEc used multiple data sources and methods to address each question. In general, consistent information obtained from across multiple data sources and methods bolsters the strength and confidence of evaluation findings.

The remainder of this chapter describes the analytical approaches for each evaluation question, drawing on the benchmarking, literature review, process maps, Lean outputs, interviews, survey, and case studies, as appropriate.

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EXHIBIT 2. EVALUATION QUESTIONS, METHODS, AND ANALYTICAL APPROACH

EVALUATION QUESTIONS	METHODS							ANALYTICAL APPROACH
KEY: ★ = PRIMARY DATA SOURCE FOR ANSWERING QUESTION ✓ = SUPPLEMENTAL DATA SOURCE FOR ANSWERING QUESTION	BENCH-MARKING	LIT REVIEW	PROCESS MAP	LEAN OUTPUTS	INTERVIEWS	SURVEY	CASE STUDIES	
Questions on Current Implementation of the FOIA Program								
1. How have the updated Agency-wide FOIA policy and procedures (September 2014) affected FOIA implementation in program offices and regions to date?		✓			★	★		• **Literature review:** Reviewed updated Agency-wide FOIA policy and procedures. • **Interviews:** Interviewed EPA FOIA Coordinators and Officers, senior managers in OEI and OGC, and a sample of staff with FOIA responsibilities about changes following the new Agency-wide policy and procedures. • **Survey:** Surveyed staff with FOIA responsibilities, including subject matter experts about changes following the new Agency-wide policy and procedures.
2. What are the major differences in organization-specific FOIA procedures (March 31, 2015) across program offices and regions?		★			✓			• **Literature review:** Reviewed organization-specific FOIA procedures developed by program offices/regions; conducted a high-level qualitative comparison of procedures across different program offices/regions; and summarized key differences. • **Interviews:** Interviewed EPA FOIA Coordinators and FOIA Officers in different EPA program offices and regions about their procedures.
a. What factors explain these differences?		✓			★			• **Literature review:** Reviewed and determined if the procedure documents developed by the program offices/regions provide a rationale or explanation that helps explain the differences across organizations. • **Interviews:** Interviewed EPA FOIA Coordinators and FOIA Officers in different EPA program offices and regions about their procedures.
3. How does the performance of EPA's FOIA program compare to the performance of other, comparable federal agencies?	★	✓			✓		★	• **Benchmarking:** Using a set of common and readily available metrics, benchmarked EPA to other, comparable federal agencies using existing data in FOIA.gov and Annual FOIA Reports. • **Literature review:** Reviewed Annual FOIA Reports filed with DOJ by EPA and other federal agencies. • **Interviews:** Interviewed FOIA manager at OSHA, DOJ representative familiar with EPA's FOIA program, and FEAT personnel with experience in NOAA's FOIA program to gain insights on intra-Agency benchmarking data. • **Case studies:** Prepared a case study of an agency comparable to EPA with exemplary FOIA performance (i.e., OSHA).

EVALUATION QUESTIONS	METHODS							ANALYTICAL APPROACH
KEY: ★ = PRIMARY DATA SOURCE FOR ANSWERING QUESTION ✓ = SUPPLEMENTAL DATA SOURCE FOR ANSWERING QUESTION	BENCH-MARKING	LIT REVIEW	PROCESS MAP	LEAN OUTPUTS	INTERVIEWS	SURVEY	CASE STUDIES	
4. What are the major differences in FOIA program structure and practices across EPA's regions and program offices?	★		★		✓	✓		• **Benchmarking:** Using a set of common and readily available metrics, benchmarked regional performance using data in Annual FOIA Reports. • **Process map:** Prepared generic process maps for EPA's FOIA program, and used the process maps in combination with the interview findings to describe key differences across regions and program offices. • **Interviews:** Interviewed EPA FOIA Coordinators and FOIA Officers in different EPA program offices and regions to gain insights into differences in program structure and practices. • **Survey:** Surveyed staff with FOIA responsibilities, including subject matter experts, to explore the time required to respond to different types of FOIA requests, and the percent of their time spent on FOIA versus other job responsibilities.
a. How do these differences affect employee accountability to the FOIA program?			✓		★	✓		• **Process map:** Used the process maps in combination with the interview findings to describe how differences in key parts of the process could affect accountability. • **Interviews:** Interviewed EPA FOIA Coordinators and Officers and senior managers in OEI and OGC to collect perceptions on how program structure affects accountability. • **Survey:** Surveyed staff with FOIA responsibilities, including subject matter experts, using questions designed to assess the level and nature of responsibility that respondents in different offices and regions have toward the FOIA program.
b. How do these differences affect consistency in the Agency's FOIA processes and responses to FOIA requests?			✓		★	✓		• **Process map:** Used the process maps in combination with the interview findings to describe how differences in key parts of the process could affect consistency. • **Interviews:** Interviewed EPA FOIA Coordinators and Officers and senior managers in OEI and OGC to gather perceptions on how program structure affects consistency. • **Survey:** Surveyed staff with FOIA responsibilities, including subject matter experts, to assess with whom they coordinate - and the nature and extent of coordination - in responding to FOIA requests.
Prospective Questions on Improving the FOIA Program								
5. What best practices could EPA adopt to ensure accountability in the Agency's FOIA processes and responses to FOIA requests?		✓		✓	★		✓	• **Literature review:** Identified best practices in the literature (e.g., Annual FOIA Reports, EPA FOIA task force and work group report, independent studies of EPA and other agencies' FOIA programs, etc.) for strengthening accountability in responding to FOIA requests. • **Lean outputs:** Identified best practices in Lean outputs for strengthening accountability in responding to FOIA requests. • **Interviews:** Interviewed EPA FOIA Coordinators and Officers, senior managers in OEI and OGC, and OSHA FOIA managers to solicit their input on mechanisms for strengthening accountability. • **Case studies:** Illustrated how OSHA has implemented its FOIA program to ensure accountability.

EVALUATION QUESTIONS	METHODS							ANALYTICAL APPROACH
KEY: ★ = PRIMARY DATA SOURCE FOR ANSWERING QUESTION ✓ = SUPPLEMENTAL DATA SOURCE FOR ANSWERING QUESTION	BENCH-MARKING	LIT REVIEW	PROCESS MAP	LEAN OUTPUTS	INTERVIEWS	SURVEY	CASE STUDIES	
6. What best practices could EPA adopt to ensure consistency in the Agency's FOIA processes and responses to FOIA requests?		✓		✓	★		✓	• **Literature review:** Identified best practices in literature for improving consistency in responding to FOIA requests. • **Lean outputs:** Identified best practices in Lean outputs for improving consistency in responding to FOIA requests. • **Interviews:** Interviewed EPA FOIA Coordinators and Officers, senior managers in OEI and OGC, and OSHA FOIA managers to solicit their input on mechanisms for improving consistency. • **Case studies:** Illustrated how OSHA has implemented its FOIA program to ensure consistency.
7. What opportunities, if any, exist for EPA to streamline its FOIA processes?		✓	✓	✓	★	✓		• **Literature review:** Identified mechanisms in the literature for streamlining FOIA policies and procedures that 1) have not been implemented by EPA and 2) have not been determined to be infeasible by OEI. • **Process map:** Identified and described where delays/inconsistencies occur and possible streamlining opportunities, in light of key steps in the process maps. • **Lean outputs:** Identified streamlining opportunities in Lean outputs. • **Interviews:** Interviewed EPA FOIA Coordinators and Officers to solicit their input on streamlining opportunities that the IEc team thinks may be practical and effective based on our scoping interviews, literature review, Lean outputs, and benchmarking data. • **Survey:** Surveyed staff with FOIA responsibilities, including subject matter experts, to gather their input on streamlining opportunities that the IEc team thinks may be practical and effective based on the scoping interviews, literature review, Lean outputs, and benchmarking data.
8. How might changes to the program's organizational structure and/or the adoption of new technologies affect EPA's efforts to ensure the accountability, consistency, and efficiency of the Agency's FOIA program?	*(See methods discussed by sub-question, below.)*							*(See approaches discussed by sub-question, below.)*
a. In what ways could EPA centralize its FOIA program (e.g., centralizing receipt to processing of FOIA requests, enhancing FOIAonline capabilities to centrally track and manage FOIA requests, adopting a centralized program structure in regions/program offices, etc.)?		✓			★			• **Literature review:** Synthesized information in the literature regarding options and mechanisms for FOIA centralization. • **Interviews:** Interviewed EPA FOIA Coordinators and Officers, and a sample of staff with FOIA responsibilities, to solicit feedback on existing and potential centralization options.

EVALUATION QUESTIONS	METHODS							ANALYTICAL APPROACH
KEY: ★ = PRIMARY DATA SOURCE FOR ANSWERING QUESTION ✓ = SUPPLEMENTAL DATA SOURCE FOR ANSWERING QUESTION	BENCH-MARKING	LIT REVIEW	PROCESS MAP	LEAN OUTPUTS	INTERVIEWS	SURVEY	CASE STUDIES	
b. In what ways could EPA use technology to efficiently manage and process FOIA requests, and/or be proactive in making information publicly available?		✓			★	✓		• **Literature review:** Synthesized information in the literature regarding technologies available for managing FOIA requests. • **Interviews:** Interviewed EPA FOIA Coordinators and Officers, and a sample of staff with FOIA responsibilities, to solicit feedback on technologies for managing FOIA requests that they have used or would like to try. • **Survey:** Surveyed staff with FOIA responsibilities, including subject matter experts, about access to technological resources to process FOIA requests.
c. What are the potential benefits and costs of each of the approaches listed in sub-questions a and b, including but not limited to potential impacts on: total personnel required, human resources reallocation requirements, hardware/software costs, training costs, FOIA processing times, strategic coordination of FOIA requests, and litigation costs?	✓	✓			★	★	✓	• **Benchmarking:** Compared data on personnel and FOIA costs across EPA regions and offices to discern trends, and explored possible correlations with centralization and/or greater use of technological approaches to manage FOIA requests. • **Literature review:** Synthesized information in the literature regarding costs and benefits of centralization and technological approaches to managing FOIA requests. • **Interviews:** Interviewed EPA FOIA Coordinators and Officers to gather information on potential costs and benefits of centralization and technological approaches for managing FOIA requests, and to gather insights on benchmarking data on costs and benefits. • **Survey:** Surveyed staff with FOIA responsibilities, including subject matter experts, on: FOIA request processing times; effects of technology use on processing time; and percent of their overall time dedicated to FOIA. • **Case studies:** Analyzed available information on costs and benefits of centralization and technology use within the context of the case studies.
9. How can EPA most effectively leverage the FOIA Expert Assistance Team (FEAT) within the context of ongoing FOIA improvement efforts?					★			• **Interviews:** Interviewed EPA FOIA Coordinators and Officers to gather information on experience working with the FEAT to date and planned future use of the FEAT.

QUESTIONS ON CURRENT IMPLEMENTATION OF THE FOIA PROGRAM

1. How have the updated Agency-wide FOIA policy and procedures (September 2014) affected FOIA implementation in program offices and regions to date?

IEc's review of the updated Agency-wide FOIA policy and procedures provided a baseline understanding of the policy and procedures offices/regions are tasked with implementing. The interviews with EPA FOIA Coordinators and Officers, senior managers in OEI and OGC, and a sample of staff with FOIA responsibilities provided information on the relative changes within each office/region following the new Agency-wide policy and procedures. The survey of staff with FOIA responsibilities enabled IEc to examine the types of changes that affect FOIA operations at the ground level.

2. What are the major differences in organization-specific FOIA procedures (March 31, 2015) across program offices and regions?

IEc used the literature review as the primary source of information to assess organization-specific FOIA procedures and to conduct a high-level qualitative comparison of procedures across different program offices/regions. IEc summarized and compared the key differences. Interviews with EPA FOIA Coordinators and Officers corroborated information from the written procedures. This research helped establish similarities and differences in FOIA written procedures across offices/regions.

   a. What factors explain these differences?

As part of the literature review, IEc examined the procedure documents developed by the program offices/regions for a rationale that may help explain the differences across organizations (e.g., FOIA program structure). Interviews with EPA FOIA Coordinators and Officers provided additional information regarding the logic and purpose shaping the procedures.

3. How does the performance of EPA's FOIA program compare to the performance of other, comparable federal agencies?

Benchmarking, the literature review, interviews, and case studies helped to facilitate a comparison of EPA's FOIA program performance to other federal agencies. IEc used a set of common and readily available metrics (from FOIA.gov and Annual FOIA Reports) to benchmark EPA to other, comparable federal agencies. IEc used the metrics to examine Agency FOIA performance trends over time. In addition to this quantitative data, IEc examined the Annual FOIA Reports for qualitative information that provided context and detail for understanding Agency FOIA performance for any given year. Interviews with FOIA managers at OSHA, a DOJ representative familiar with EPA's FOIA program, and FEAT personnel with experience in NOAA's FOIA program allowed IEc to gain insights into intra-Agency benchmarking data. Finally, IEc used the data collected through the above methods to prepare a case study of an agency comparable to EPA with exemplary FOIA performance (i.e., OSHA).

4. What are the major differences in FOIA program structure and practices across EPA's regions and program offices?

IEc used benchmarking, the literature review, process maps, interviews, and the survey to compare differences in FOIA program structure and practices across EPA's regions and program offices. Similar to the federal benchmarking exercise, IEc used a set of common and readily available metrics from the Annual FOIA Reports to benchmark regional FOIA performance over time. EPA only has data for individual headquarters program offices for FY 2013 and FY2014; therefore, IEc focused the benchmarking exercise on EPA regions that have readily available data from FY 2001 to FY 2014. The literature review focused on EPA's Annual FOIA Reports filed with DOJ to identify differences in regional FOIA program performance. Interviews with EPA FOIA Coordinators and Officers in different EPA program offices and regions provided insights into practical differences in program structure and practices. IEc prepared two generic process maps for EPA's FOIA program, and used the process maps in combination with the interview findings to describe key differences across regions and program offices. The survey of staff with FOIA responsibilities, including subject matter experts, allowed IEc to examine the percent of their time spent on FOIA versus other job responsibilities. IEc summarized and compared responses and findings from the multiple data collection approaches.

a. How do these differences affect employee accountability to the FOIA program?

IEc used some benchmarking data in conjunction with interviews to investigate program structure effects on accountability. IEc also used the interviews of EPA FOIA Coordinators and Officers and senior managers in OEI and OGC to collect perceptions on how program structure affects accountability. In combination with the interview findings, IEc developed the process maps to describe how differences in key parts of the process could affect accountability. Finally, IEc used the survey of staff with FOIA responsibilities, including subject matter experts, to assess how staff view their FOIA responsibilities relative to other job responsibilities.

b. How do these differences affect consistency in the Agency's FOIA processes and responses to FOIA requests?

Interviews were the primary method for assessing the impact of differences in FOIA program structure on consistency in the Agency's FOIA processes and response to FOIA requests. During the interviews with EPA FOIA Coordinators/Officers and senior managers in OEI and OGC, IEc collected opinions on how program structure affects consistency. IEc investigated effects on consistency using the benchmarking data in conjunction with the interview data. The process maps built on the interview findings to describe how differences in key parts of the process could affect consistency. The survey of staff with FOIA responsibilities, including subject matter experts, assessed with whom they coordinate – and the nature and extent of coordination – in responding to FOIA requests.

PROSPECTIVE QUESTIONS ON IMPROVING THE FOIA PROGRAM

5. What best practices could EPA adopt to ensure accountability in the Agency's FOIA processes and responses to FOIA requests?

IEc relied heavily on interviews to identify best practices to ensure accountability in the Agency's response to FOIA requests. The literature review and analysis of Lean outputs determined best practices in reports and studies (e.g., Annual FOIA Reports, EPA FOIA task force and work group report, independent studies of EPA and other agencies' FOIA programs, etc.) for strengthening accountability in responding to FOIA requests. IEc conducted interviews with EPA FOIA Coordinators and Officers, senior managers in OEI and OGC, and OSHA FOIA managers to solicit input on mechanisms for strengthening accountability. Finally, the case study illustrates how OSHA has implemented its FOIA program to strengthen accountability.

6. What best practices could EPA adopt to ensure consistency in the Agency's FOIA processes and responses to FOIA requests?

Similar to our approach to the previous evaluation question, IEc used interviews as the primary data sources to identify best practices to ensure consistency in the Agency's FOIA processes and responses to FOIA requests. IEc also interviewed EPA FOIA Coordinators and Officers, senior managers in OEI and OGC, and OSHA FOIA personnel to solicit their input on mechanisms for improving consistency. The literature review was a secondary data source, and the case study illustrates how OSHA has implemented its FOIA program to improve consistency

7. What opportunities, if any, exist for EPA to streamline its FOIA processes?

Interviews were the primary data source for identifying opportunities for EPA to streamline its FOIA processes. IEc used the process maps to pinpoint and describe potential delays and inconsistencies within the FOIA process. The literature review, Lean outputs, and interviews provided mechanisms and opportunities for streamlining FOIA policies and procedures. The literature review and interviews also provided information on the policies and procedures 1) that have not been implemented by EPA and 2) have not been determined to be infeasible by OEI. Finally, the interviews and survey provided IEc the opportunity to solicit input from EPA FOIA Coordinators and Officers and other staff with FOIA responsibilities (including SMEs) on streamlining opportunities.

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8. How might changes to the program's organizational structure and/or the adoption of new technologies affect EPA's efforts to ensure the accountability, consistency, and efficiency of the Agency's FOIA program?

    a. In what ways could EPA centralize its FOIA program (e.g., centralizing receipt to processing of FOIA requests, enhancing FOIAonline capabilities to centrally track and manage FOIA requests, adopting a centralized program structure in regions/program offices, etc.)?

The literature review, process maps, Lean outputs, interviews, and case studies all provided information on options for EPA to consider regarding centralization of its FOIA program. IEc synthesized information in the literature regarding options and mechanisms for FOIA centralization. IEc used interviews with EPA FOIA Coordinators and Officers, and subject matter experts, to solicit feedback on existing and potential centralization options.

    b. In what ways could EPA use technology to efficiently manage and process FOIA requests, and/or be proactive in making information publicly available?

Interviews were the primary data source for identifying ways EPA could use technology to efficiently implement the FOIA program. The literature review synthesized information in the literature regarding technologies available and tested for managing FOIA requests. As described in the above question, interviews of EPA FOIA Coordinators and Officers, and subject matter experts, allowed IEc to solicit feedback on technologies for managing FOIA requests that they have used or would like to try. IEc also surveyed staff with FOIA responsibilities, including subject matter experts, about access to technological resources to process FOIA requests, and the effects of technology on processing time.

    c. What are the potential benefits and costs of each of the approaches listed in sub-questions a and b, including but not limited to potential impacts on: total personnel required, human resources reallocation requirements, hardware/software costs, training costs, FOIA processing times, strategic coordination of FOIA requests, and litigation costs?

IEc used benchmarking data, the literature review, interviews, survey, and case studies to conduct a forward-looking, primarily qualitative examination of the potential benefits and costs of the proposed changes, but did not measure actual benefits and costs. IEc examined data on personnel and FOIA costs across EPA regions and offices to discern trends, including any potential correlations with centralization. IEc synthesized information in the literature regarding costs and benefits of centralization and technological approaches to managing FOIA requests. Interviews of EPA FOIA Coordinators and Officers allowed IEc to gather information on potential costs and benefits of centralization and technological approaches for managing FOIA requests, and to gather insights on benchmarking data. IEc surveyed staff with FOIA responsibilities,

including subject matter experts, on: FOIA request process times; effects of technology use on processing time; and percent of overall time dedicated to FOIA.

9. How can EPA most effectively leverage the FEAT within the context of ongoing FOIA improvement efforts?

In combination with the answers to the previous evaluation questions, IEc used interviews to examine how EPA can most effectively leverage the FEAT within the context of the ongoing FOIA improvement efforts. IEc used the responses to discern where the FEAT contributes to FOIA program efficiencies, effectiveness, and consistency. Interviews with EPA FOIA Coordinators and Officers allowed IEc to gather information on experience working with the FEAT to date and planned future uses of the FEAT. With this information, IEc identified opportunities for the Agency to utilize (or better utilize) the FEAT in order to improve the FOIA program.

STRENGTHS AND LIMITATIONS OF THE METHODOLOGY

This evaluation combined findings from multiple data sources, a technique known as "mixed-methods evaluation." This approach enabled us to validate findings from more than one source, thereby increasing confidence in the evaluation findings due to consistent results across methods. Mixed-methods evaluation is a common approach used to enhance methodological robustness of evaluation designs. Additionally, IEc's use of quantitative and qualitative methods supports well-substantiated and meaningful results. Quantitative data provides strength to evaluation findings. Combined with qualitative data, this evaluation approach allows users to understand underlying facts about program performance and the appropriate contextual information to interpret those facts. Finally, IEc's evaluation implementation method was an iterative approach that allowed for additional investigation as necessary. For example, IEc used preliminary survey results to identify SMEs for interviews to examine interesting or notable survey findings.

Given the available data, resources, and scope of the evaluation, some limitations to the evaluation approach should be noted. These limitations include: lack of comprehensive temporal data for headquarters offices,[22] inability to fully examine the diversity of FOIA implementation across the Agency, potential bias associated with purposive sampling for interviews, potential bias associated with exclusion of contractors and grantees from the survey, and potential bias associated with survey non-response. Details on the limitations are described below:

- **Lack of temporal data for headquarters offices.** IEc only had complete headquarters data broken out by program offices for FY 2013 and FY 2014. The disaggregated data did not exist on FOIAonline, FOIA.gov, or in the Annual FOIA reports. As a result, IEc was not able to compare trends in FOIA performance for headquarters offices over time – which limited our ability to

[22] EPA provided IEc with status reports for FY 2011-2014 with headquarters data. IEc's review of the spreadsheets indicated data for FY 2011 and FY 2012 was incomplete and did not correspond with headquarters data presented in the FOIA annual reports. As such, IEc had complete/consistent headquarters data broken out by program office for FY13 and FY14 only.

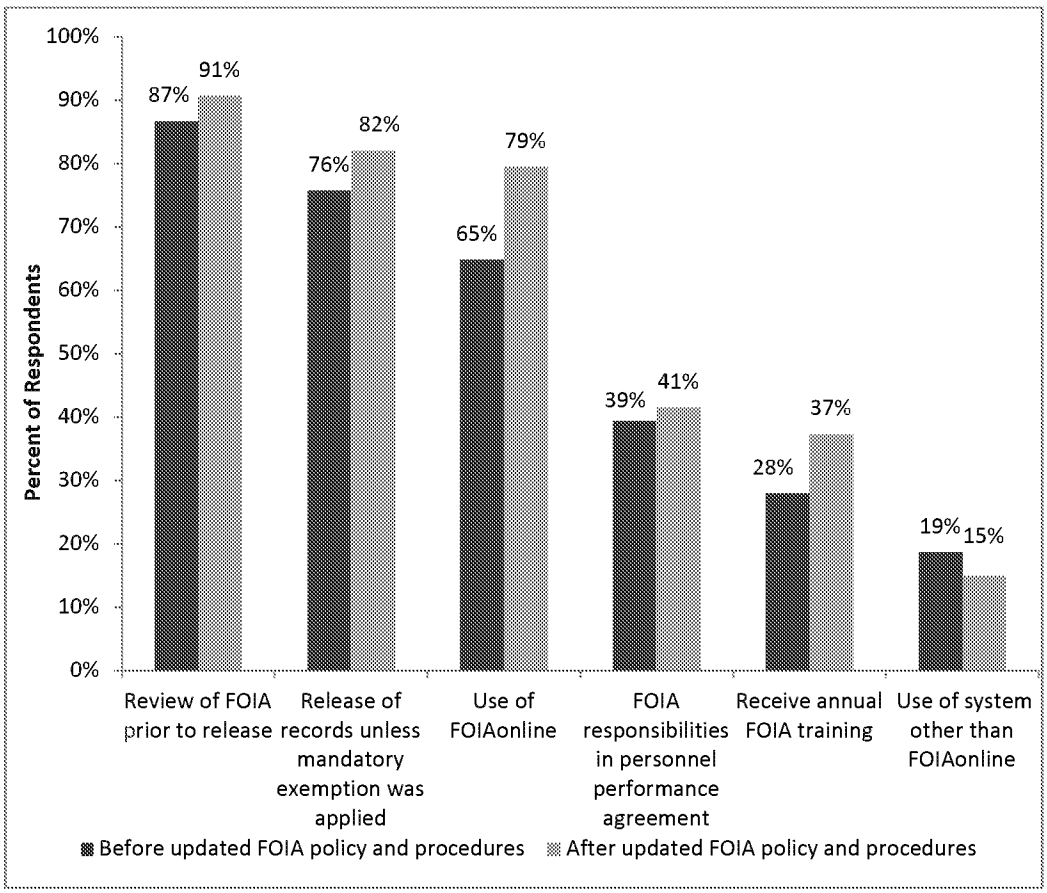
benchmark headquarters office performance and answer evaluation question four (parts "a" and "b"). Therefore, IEc focused the evaluation on differences in FOIA program performance across the regions and headquarters trends over time in aggregate.

- **Inability to fully examine the diversity of FOIA implementation across the Agency.** EPA's FOIA program is implemented in different ways across the Agency, and depends, in part, on the organizational structure of any given office/region. Our mixed-method approach attempted to capture responses and results from a variety, but not all headquarters offices. Additionally, the evaluation resources and timeframe limited IEc's ability to capture detailed information on FOIA program processes in each individual office/region. As described above, IEc focused our resources on developing two generic process maps rather than attempting to map the specific process for each office and region.
- **Potential bias associated with purposive sampling for interviews.** IEc was not able to select a statistically valid sample of interviewees given the relatively small number of interviews that could be conducted within the evaluation budget and timeline, and the several types of interviewees that needed to be included. Therefore, as described above, IEc selected a purposive sample of interviewees representative of all regional offices and a sub-set of headquarters program offices. IEc's purposive sample of interviewees also included individuals most knowledgeable about: EPA FOIA policies and procedures; FOIA program streamlining opportunities; or best program practices at other federal agencies. The purposive sampling approach could potentially introduce bias into the results.
- **Potential bias associated with exclusion of contractors and grantees from the survey.** IEc conducted a brief online survey to capture responses from a representative sample of federal EPA FOIAonline users. However, federal EPA employees are not the only users of FOIAonline; EPA hires both contractors and grantees that use FOIAonline. As explained in the survey section of this chapter, the requirements of the Paperwork Reduction Act prevented IEc from surveying contractors and grantees. Yet contractor and grantee experiences with FOIA may differ from those of federal EPA employees. Depending on the number of contractor and grantee FOIAonline users, excluding these users could bias the results. Survey findings are reflective of federal EPA employees *only* and not of FOIAonline users as a whole.
- **Potential bias associated with survey non-response.** As mentioned above IEc conducted an online survey of federal EPA FOIAonline users. However, our relatively low survey completion rate (18.2 percent of FOIAonline users) could bias survey findings if the respondents were significantly different than the general population of federal EPA FOIAonline users.

1. How have the updated Agency-wide FOIA policy and procedures (September 2014) affected FOIA implementation in program offices and regions to date?

In September 2014, OEI issued updated Agency-wide FOIA policy and procedures documents, which codified several requirements and practices for the FOIA program. As shown in Exhibit 3, survey responses indicate that the Agency's observance of these requirements is greater today than one year ago (i.e., prior to the new policy and procedures documents). For example, approximately 79 percent of survey respondents indicate they use FOIAonline today compared to 65 percent who used FOIAonline one year ago. A higher percentage of respondents indicate that they receive annual FOIA training today than a year ago, but this percentage remains low at 37 percent.

EXHIBIT 3. COMPARISON OF PRACTICES BEFORE AND AFTER UPDATED FOIA POLICY AND PROCEDURES



In another survey question 15 percent of survey respondents indicated they had not heard about the updated FOIA procedures, which may help explain why the observance of these requirements remains below 100 percent.

Approximately nine of out ten respondents indicated that at least one other EPA staff person reviews documents prior to releasing FOIA records. The survey question did not specify the job title and/or level of the staff person conducting the review and sign-off; however, the interviewees suggested that one of the largest impacts of the Agency-wide policy and procedures is the requirement for authorized officials to review and sign off on all FOIA requests. Some offices had this requirement prior to the updated Agency-wide policy and procedures, but most did not.

Both interview and survey respondents expressed concern about the requirement for authorized official sign-off on all FOIA responses, indicating that it delays and complicates the process of responding to a FOIA request. Respondents perceive this requirement as being unnecessary in some cases – e.g., when responsive information is already online and the response consists of referring the requester to a website. One region also indicated that the requirement for authorized official sign-off negated the benefits of their previously instituted streamlining efforts. IEc's review of the Agency-wide FOIA policy and procedures also indicates a lack of clarity regarding division directors' authority to sign the response letter sent to requesters. The current procedures allow division directors the authority to issue initial determinations only with a formal re-delegation of authority from administrators or equivalents. However, interviews suggest that formal delegation of authority may not be standard across the Agency.

2. What are the major differences in organization-specific FOIA procedures (March 31, 2015) across program offices and regions? What factors explain these differences?

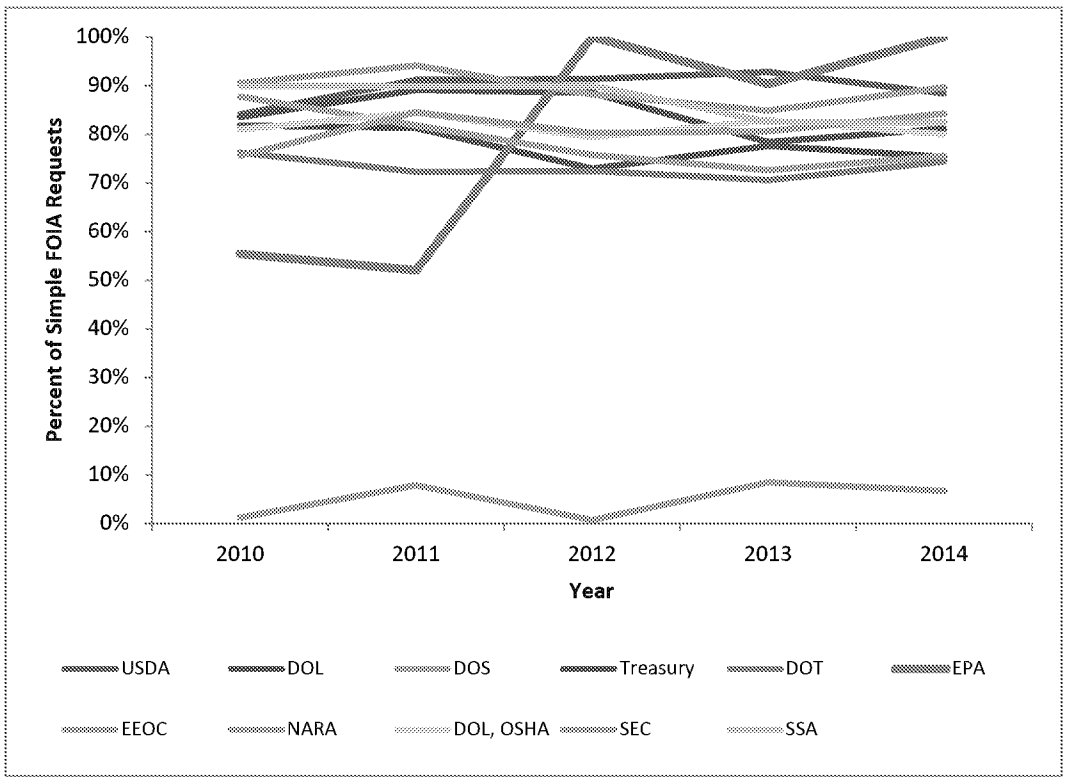
The updated FOIA policy and procedures required program offices and regions to submit their organization-specific FOIA procedures to OEI by March 31, 2015. IEc's analysis of the organization-specific procedures showed very little variation in the written procedures across different parts of the Agency. With very few exceptions, the organization-specific procedures closely follow the Agency-wide procedures and address all of the requirements.

However, office/regional procedures do differ in some ways across the Agency – mostly in terms of the staff position assigned with implementing steps in the process, rather than the actual process steps. For example, as indicated in the process maps (see Appendix F), in Region 4's centralized system, SMEs may only be involved in determining search parameters, collecting and reviewing records, and determining which records (or portions) may be released. More decentralized systems may rely on SMEs to complete additional steps in the FOIA process such as contacting the requester, making assignments via FOIAonline, or preparing the response letter. The degree of centralization of the FOIA program in an office or region helps explain this difference in the written procedures.

3. How does the performance of EPA's FOIA program compare to the performance of other, comparable federal agencies?

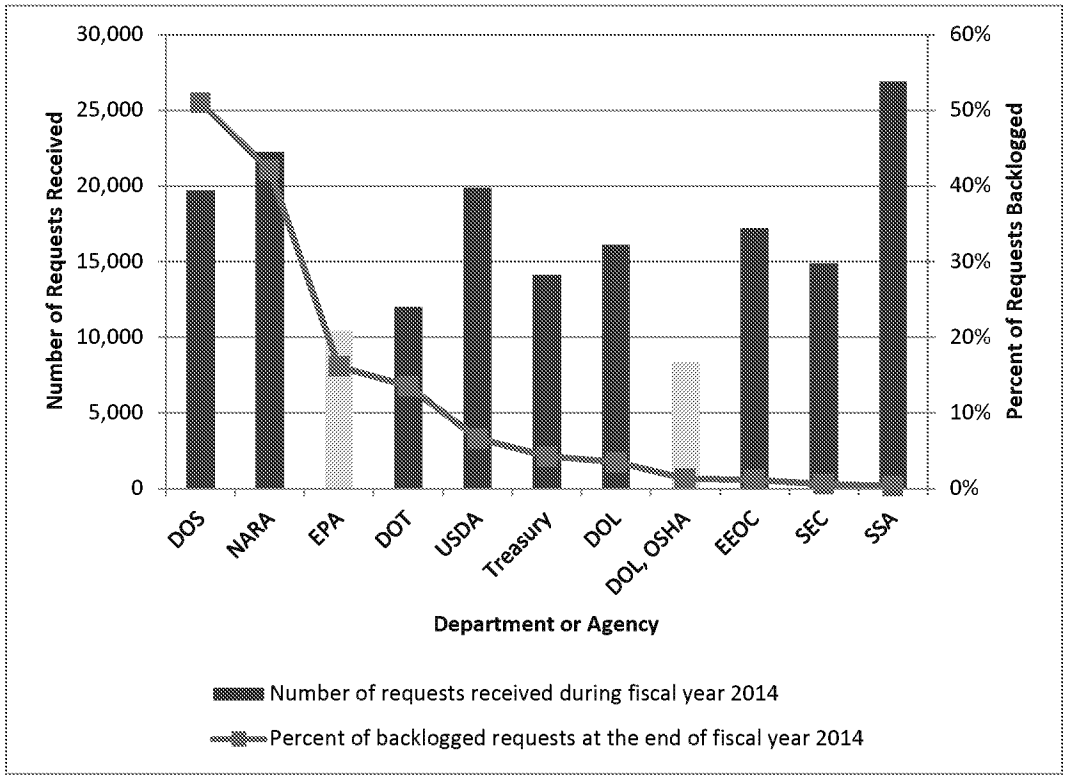
EPA's FOIA program has a strong reputation among federal agencies and compares favorably with its peers in several areas. DOJ assesses FOIA performance on the following dimensions: reducing backlogs, reducing the use of exemptions, making records available to the public, implementing technology, and having an effective system in place for responding to FOIA requests. Exhibit 4 shows the percent of FOIA requests responded to in 1-20 days for EPA and comparable federal agencies. EPA has seen recent improvement in its speed of processing simple requests (an element of effective systems in place). EPA also typically ranks highly in its utilization of technology, largely due to its leadership in FOIAonline.

EXHIBIT 4. PERCENT OF SIMPLE FOIA REQUESTS RESPONDED TO IN 1-20 DAYS



However, as shown in Exhibit 5, EPA had a higher percent of requests backlogged (approximately 16 percent) at the end of FY 2014 than other federal agencies that had a similar or higher volume of FOIA requests. (The graph calls attention to the comparison between EPA and OSHA, for which IEc prepared a case study; see Appendix G). In addition, EPA's backlog has been growing over the past several years, which is in part due to DOJ's definitional clarification of the term "backlogged" to include instances in which requesters agree to an extension beyond the 20-day window.

EXHIBIT 5. NUMBER OF REQUESTS RECEIVED AND PERCENT OF BACKLOGGED REQUESTS, END OF FY 2014



4. What are the major differences in FOIA program structure and practices across EPA's regions and program offices? How do these differences affect employee accountability to the FOIA program? How do these differences affect consistency in the Agency's FOIA processes and responses to FOIA requests?

The process maps (see Appendix F) indicate multiple areas where the process differs across the Agency and are not always reflected in the office- or region-specific procedures, including variations in who has primary responsibility for collection and review of potentially responsive records (e.g., preparing the response letter, finalizing processing fees, obtaining approval from an authorized official, responding to requests, and finalizing the FOIAonline record). The survey results indicate that in general, individuals who hold an official title in the FOIA program are more likely to be involved in all FOIA tasks, with the following exceptions: conduct research to respond to requests, search for responsive records, and review responsive materials; these are all more likely to be carried out by SMEs or individuals without an official FOIA title. Differences in FOIA responsibility assignments may affect consistency and accountability. For example, SMEs may be tasked with the final close-out process in FOIAonline; however, some FOIA Coordinators reported that once SMEs send the response to the requester, the actual close-out becomes a lower priority and gets delayed, as some SMEs do not feel accountable for completing the close-out process. Responsibility for the close-out process varies across the Agency.

As also shown in the process maps, the extent of communication with requesters throughout the process varies across offices/regions. More frequent communication with requesters throughout the FOIA process can improve FOIA responses by clarifying requests; in other cases, this may introduce inconsistency into the process. For example, one office/region indicated staff contact requesters directly by phone during the process to inform them where they can find the information online. This process is not made explicit in their procedures.

The interviews and survey identified several other differences in program practices across the Agency that reflect differences in how offices/regions collect data for FOIA requests; these include:

- **Access to technology:** Only 33 percent of survey respondents indicated they have adequate access to technology for processing FOIA requests. In addition, some interview respondents felt they do not have adequate training on how to use the technology effectively. Others reported feeling overwhelmed by the new technology and did not feel they had access to adequate information technology (IT) support. Since not all EPA staff have the same technology resources and/or proficiency, responses to FOIA requests may be inconsistent. For example, one interviewee reported that staff use black marker on hard copies to redact information. This method could produce different results than the more automated redaction method available through Adobe 11.
- **Use of FOIAonline:** Eighty percent of survey respondents report they use FOIAonline to complete their FOIA responsibilities. Interview responses suggest that some regions deliberately limit the number of FOIAonline users due to concerns about data quality and document control. When people work "outside" the system, it becomes difficult to assign responsibility, track progress, and hold people accountable for responding to FOIA requests.
- **Use of eDiscovery:** Sixty-six percent of survey respondents with an official FOIA title and only 28 percent of respondents without an official FOIA title indicated they were aware of eDiscovery. Furthermore, only 12 percent of respondents who know about eDiscovery "always" use it. Interview respondents indicated that some EPA staff still rely on Outlook searches, despite OEI's guidance that this approach is insufficient to identify responsive e-mail records. E-mail records obtained through eDiscovery could be different than those obtained through an Outlook search, resulting in a lack of consistency in FOIA responses across the Agency.
- **Involvement of the FEAT:** FEAT involvement affects the process for responding to FOIA requests. Initial feedback suggests that the FEAT has helped offices and regions provide a higher-quality response in a shorter period of time, and has helped to improve the consistency of responses that require coordination across multiple offices/regions. However, the FEAT is not currently involved in all multiple office/regional FOIAs.

- **Use of contractor support:** Some offices/regions use contractors to help with large document collection. This approach seems to work well for responding to large FOIA requests; however, it may lead to inconsistent response times if some offices use contractor support while others do not.

IEc conducted a benchmarking analysis on several measures of FOIA performance to look more closely at differences across the Agency. The benchmarking analysis breaks out each of the 10 regions, but shows a consolidated total for headquarters due to limitations in the data available. Selected benchmarking results are presented in Exhibits 6 through 9.

To provide context for the analysis, Exhibit 6 shows the number of FOIA requests received over time, by headquarters and region. The total number of requests declined between 2001 and 2009 (14,252 requests to 10,317 requests), then stayed roughly constant between 2009 and 2014. Regions 5, 3, 2, and 4 receive, on average, the highest number of requests per year, respectively.

EXHIBIT 6. REQUESTS RECEIVED BY ORGANIZATION AND FISCAL YEAR

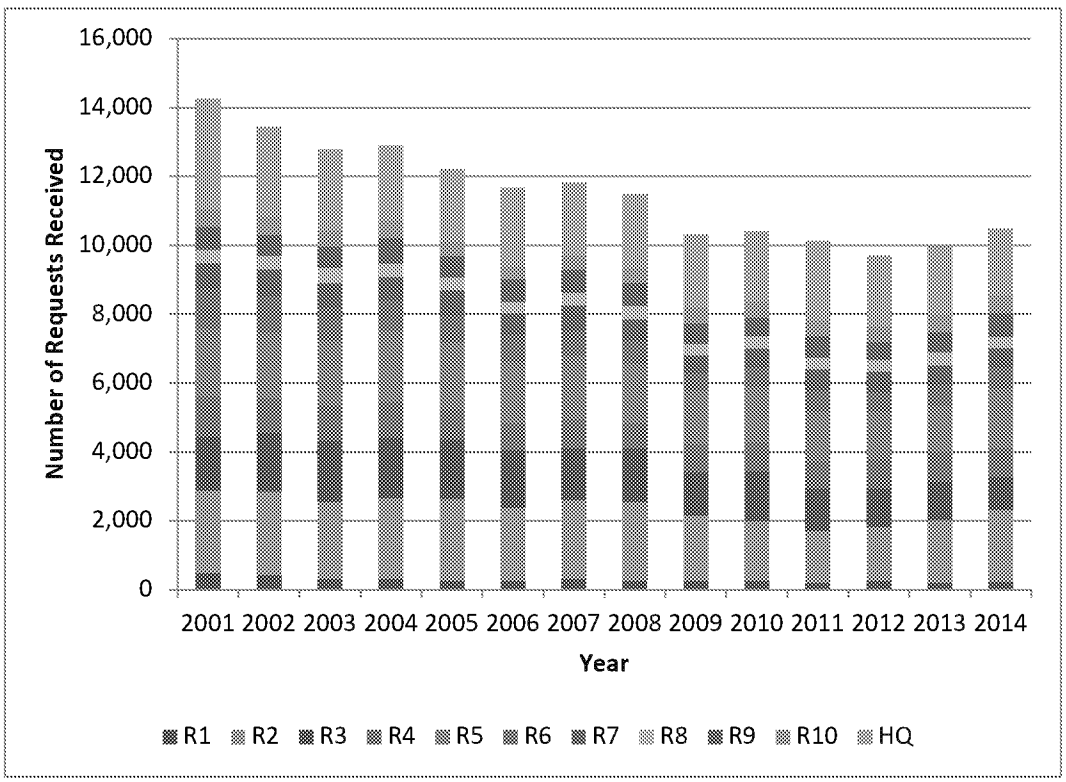
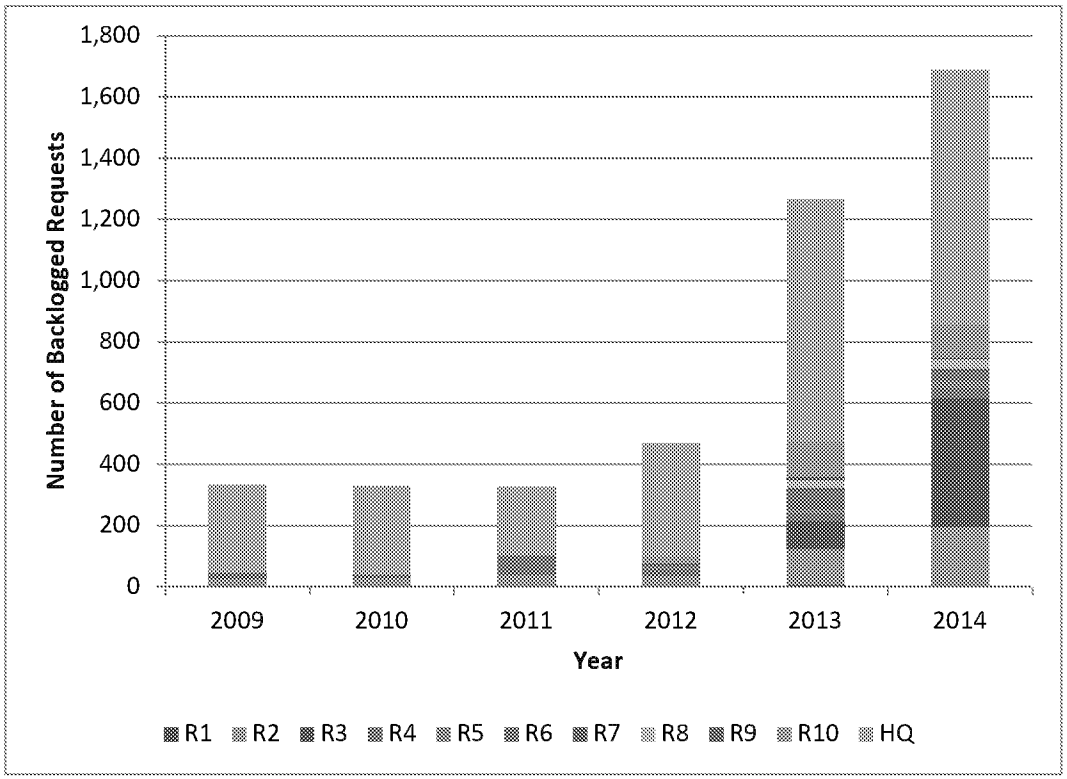


Exhibit 7 shows the number of backlogged requests for headquarters and the 10 regions from 2009 through 2014.[23] The reported number of backlogged requests across the Agency more than tripled in 2013; this was due, in part, to changes in how EPA counts

[23] Number of backlogged requests were not available in Agency Annual FOIA reports for 2001-2008.

and reports backlogged requests to DOJ. However, the backlog increased another three percent for the Agency as a whole between 2013 and 2014, which cannot be attributed to the 2013 DOJ backlog clarification. Headquarters and Regions 3, 2, and 10, respectively, appear to be the three largest contributors to the number of backlogged requests in 2013 and 2014.

EXHIBIT 7. NUMBER OF BACKLOGGED REQUESTS BY ORGANIZATION AND FISCAL YEAR



The analysis also looked at the backlog as a percent of total requests across the Agency. As shown in Exhibit 8, the percent of backlogged requests in headquarters has climbed steadily since 2011 and reached 42.7 percent in 2014. The regions with the highest percentage of backlogged requests in 2014 were Region 3 (45.1 percent, up from 8.1 percent in 2013) and Region 10 (22.6 percent, down slightly from 24.4 percent the previous year). On the other end of the spectrum, since 2009, Regions 1, 4, 5, 7, and 9 have consistently had less than five percent backlog (Regions 5, 7, and 9 have consistently had a backlog of less than two percent).

EXHIBIT 8. BACKLOGGED REQUESTS AS A PERCENTAGE OF TOTAL REQUESTS

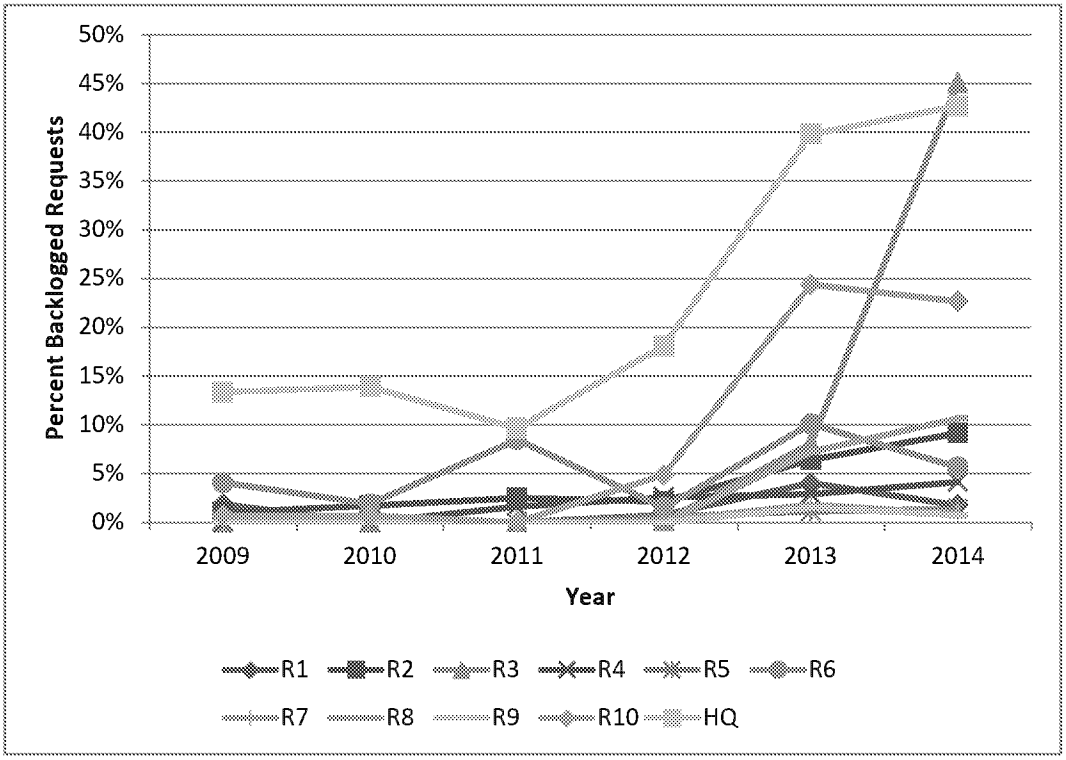
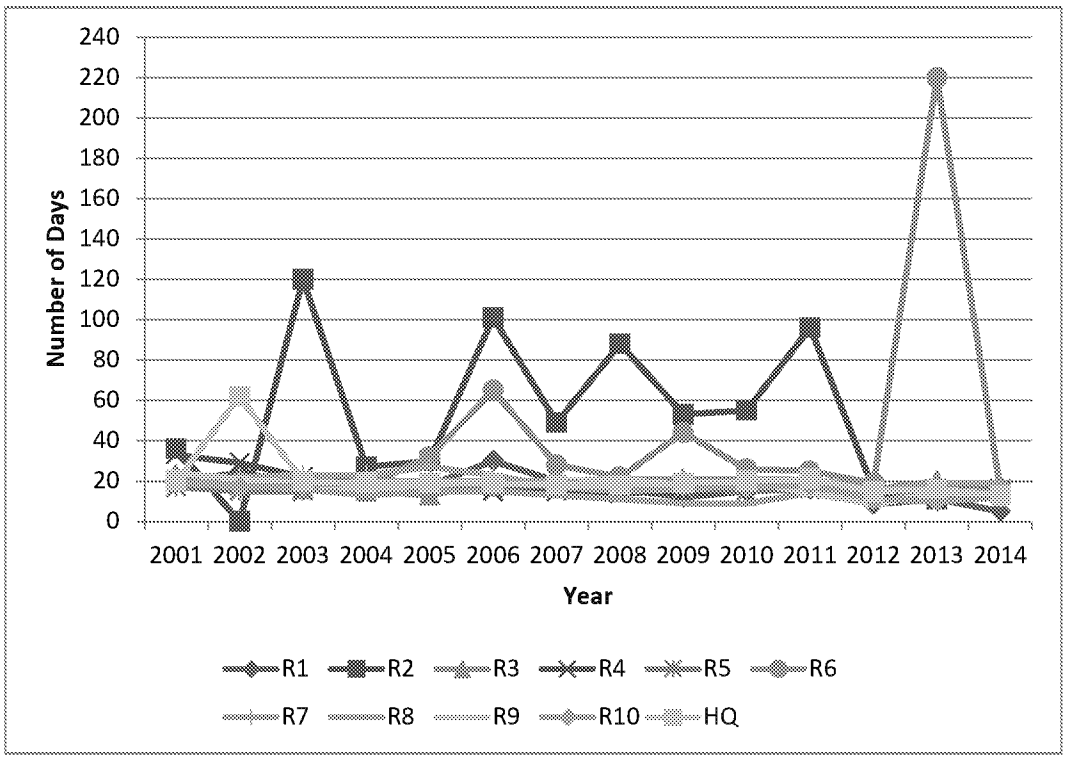


Exhibit 9 shows the median response time, in days, for responding to a simple FOIA request. Regions 2 and 6 have higher median (and average) response times across years; Region 6 had a very large increase in its response time in 2013, but came in under 20 days in 2014. It appears that the 2014 data for Region 6 is an outlier, and could be the result of a 2013 appeals case in the region, although the exact cause is unknown. With the exception of Regions 2 and 6, all regions and headquarters have achieved the 20-day response-time requirement for the majority of requests in recent years.

IEc also examined the correlations between FOIA program performance and personnel data to explain potential causes for differences in FOIA performance across the Agency. Using percent backlogged requests as a proxy for program performance and full-time FTE as representative of office/regional commitment to the FOIA program, IEc found no clear or significant relationship between program performance and resources committed. However, this finding should be interpreted in the context of information from interviewees who indicated that personnel data prior to FOIAonline was estimated and may be unreliable.

EXHIBIT 9. RESPONSE TIME FOR SIMPLE REQUESTS (MEDIAN NUMBER OF DAYS)



5. What best practices could EPA adopt to ensure accountability in the Agency's FOIA processes and responses to FOIA requests?

Interviews, survey responses, and literature suggest that EPA could increase accountability by: increasing management support and involvement, increasing accountability for responding to FOIA tasks, clarifying the role and responsibilities for each step in the FOIA process, and creating a job series of a Government Information Specialist for FOIA personnel:

- **Management support and involvement:** Suggestions to increase the level of management support and involvement included: weekly or monthly status reports to managers; in-person status meetings, and management follow-up with the responsible employees; supervisor trainings; and inclusion of FOIA performance in managers' performance reviews.
- **Increasing accountability for responding to FOIA tasks:** Interviewees noted that getting responses from "non-lead" offices (i.e., offices that are tasked with portions of a FOIA request, but are not the designated lead) is difficult. One interviewee suggested non-lead offices may be more accountable for responding to FOIA tasks if the task is assigned directly from OEI, rather than from other "peer" offices.
- **Clarifying and specifying responsibilities for each step of the process:** Respondents suggested it was especially important to clarify the role of SMEs. In decentralized FOIA systems, SMEs may only occasionally be assigned a FOIA.

Due to the infrequency of their exposure to FOIA requests, they may not be aware of current and appropriate procedures for completing a FOIA. Additional guidance from their respective region or office could help clarify their responsibilities, and/or make them aware of resources to help them respond to FOIA requests.

- **Create a Government Information Specialist role:** DOJ's 2014 *Guidance for Further Improvement Based on 2014 Chief FOIA Officer Report Review and Assessment* suggests that EPA should convert its FOIA and Privacy Act professionals to the Government Information Series in order to professionalize the FOIA workforce and maintain a transparent and accountable government (DOJ 2014).

6. What best practices could EPA adopt to ensure consistency in the Agency's FOIA processes and responses to FOIA requests?

Interviews and survey respondents offered suggestions in the following areas:

- **Improve the functionality and user-friendliness of FOIAonline:** Interview and survey responses strongly suggest that improvements to FOIAonline are needed; improving FOIAonline was among the top three responses to the open-ended survey question: "If you could have anything to make your work on FOIA easier, what would it be?" Multiple respondents suggested that every employee who receives FOIA requests should have access to FOIAonline (currently, this is not happening consistently across the Agency).

  Specific suggestions for FOIAonline included:

  - Make it easier for users to locate the "upload e-mails" section when they need to add correspondence with the requester (currently, "upload e-mails" is classified as "other");
  - Develop a standard file-naming convention for uploading documents;
  - Create an easy-to-access FOIAonline training portal;
  - Add an option to indicate that the requester approved an extension (if the user selects "yes" to unusual circumstances for an extension);
  - Build a user interface that reduces the opportunity to accidentally release uploaded, but withheld records; and
  - Conduct user interface testing to identify additional areas for improvement to FOIAonline.

  Interviews also indicated that document uploads to FOIAonline can be extremely time consuming due to the slow upload time and lack of a batch-upload function.

- **Improve records management:** Several interview and survey respondents noted the connection between FOIA processing and records management; identifying, locating, and accessing potentially responsive documents is essential for responding to similar requests in a consistent manner. Respondents suggested that

EPA should: establish a mandatory, standardized system or process for storing records, digitize all records, and improve the records management process for e-mails. Respondents expressed interest in an "everyday" electronic content and records management system that captures all electronic records, not just e-mail records. Survey and interview respondents also suggested that the Agency should provide guidance on using of the electronic records system and management oversight to ensure the staff use the system.

- **Resolve issues with Outlook e-mail searches:** Multiple interviewees stated that they continue to use the Outlook e-mail search function to find potentially responsive e-mails. However, since it is known that the Outlook search does not provide consistent results, clear guidance and accessibility to the appropriate alternative for retrieving potentially responsive e-mails (i.e., eDiscovery) is needed.
- **Improve FOIA staff expertise and take steps to limit turnover:** Some respondents stated that they need additional expertise for responding to FOIAs, and that FOIA Coordinators could be a resource with knowledge on how to complete the FOIA process, fee waivers, exemptions, etc. In addition, respondents stated that EPA should make efforts to reduce and plan for turnover among FOIA staff.
- **Provide training to meet specific needs:** This study finds two specific areas where additional training could be helpful. First, interviewees indicated that confusion persists about the FOIA policy and procedures; training could help clarify procedures and responsibilities. Second, respondents stated that training should be geared toward personnel who search for responsive records, given the importance of this task for ensuring the quality and consistency of responses.
- **Clarify the fee and fee waiver process:** IEc's review of best practices in FOIA literature identified the following suggestions: clarify what requesters must demonstrate under each factor[24] to receive a fee waiver; inform the public of enhancements to the Agency's FOIA website and other efforts to clarify what they must demonstrate under each factor; and clarify EPA's approach on when to request additional justification.
- **Use standard templates to ensure consistency in FOIA communication and responses to FOIA requests.** Many interviewees reported using standard templates for some FOIA processes (e.g., informing an SME that their help is requested for responding to a FOIA request, communicating with requesters, and/or sending FOIA responses to requesters asking for publically available information). Offices and regions could consider expanding the use of office/region specific standard templates to aspects of the FOIA process that do not currently use standard templates.

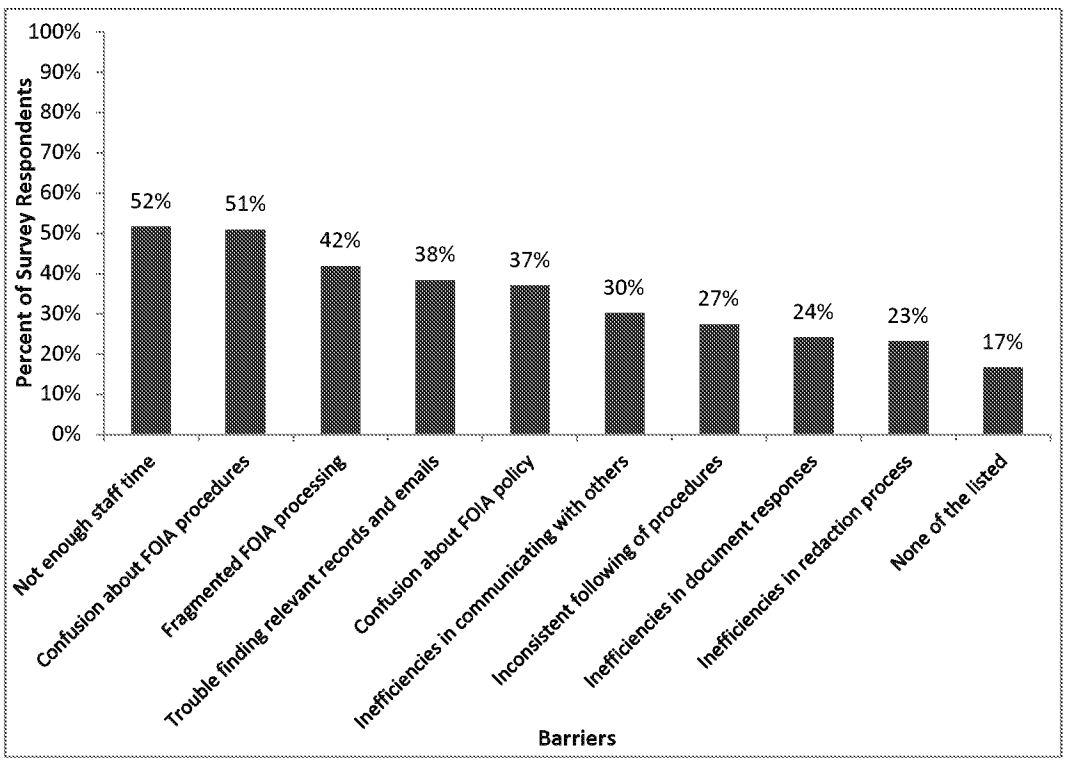
[24] Factors outlined in 40 C.F.R. § 2.107(l) (5) and 2.104(e), respectively.

- **Develop a list of technologies and databases that are currently available to assist with FOIA requests:** One interviewee indicated this type of list would be helpful, and suggested actively collaborating with technology professionals in other parts of the Agency to identify tools that can be leveraged for FOIA.
- **Centralization:** IEc discusses centralization under Question 8c below.

7. What opportunities, if any, exist for EPA to streamline its FOIA processes?

The process maps (see Appendix F) reflect multiple places where there are delays in the process – particularly the process for fee waivers, handling large FOIA requests, collecting and reviewing potentially responsive records, use of FOIA online, and the review and sign-off process. Survey and interview responses indicate these delays may be due, in-part, to confusion about FOIA policy and procedures. As shown in Exhibit 10, survey respondents indicated common barriers to FOIA efficiency.

EXHIBIT 10. PERCENT OF SURVEY RESPONDENTS INDICATING BARRIERS TO FOIA EFFICIENCY



Interview and survey respondents identified the following measures that EPA could take to streamline the FOIA process:

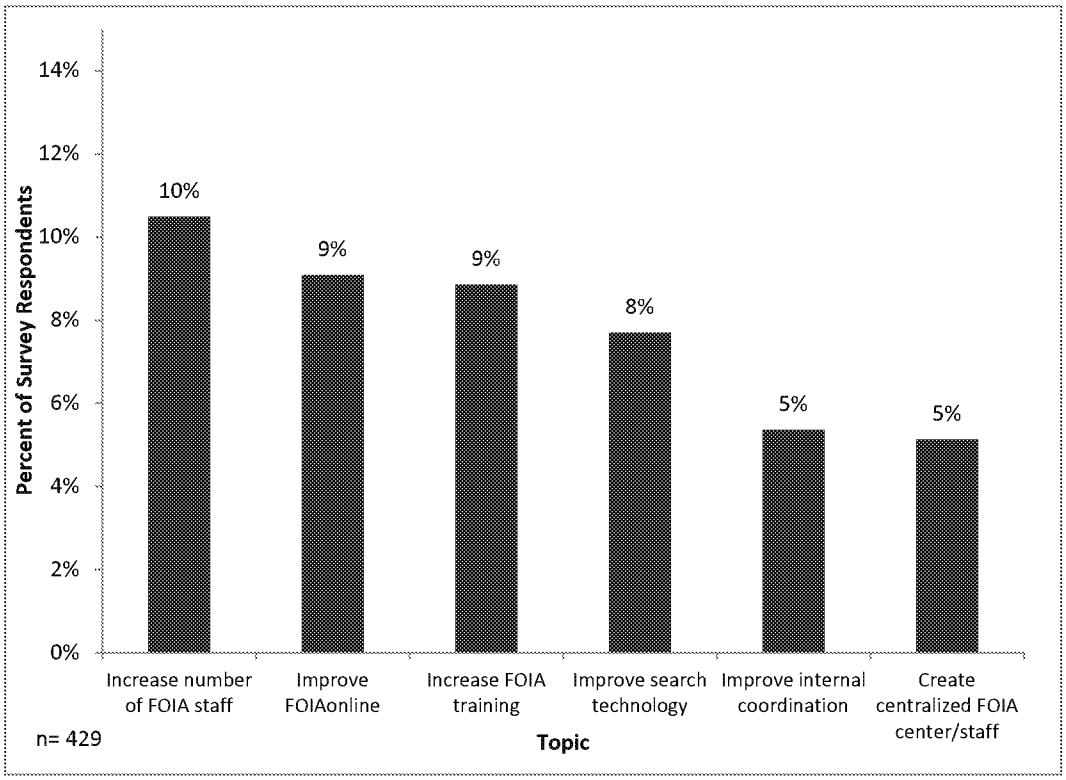
- **Clarify roles and responsibilities, particularly for large FOIA requests:** Among survey respondents, some of the most frequently cited barriers to greater efficiency were confusion about FOIA procedures (51 percent), fragmented FOIA processing (42 percent), and confusion about FOIA policy (37 percent). Confusion about processing large FOIA requests is related to general uncertainty about FOIA

procedures; an interviewee suggested this could be improved with standard operating procedures to guide large collections and reviews.

- **Increase the use of proactive disclosure:** Some interview respondents suggested adding records to the online reading room and making these records searchable. For example, proactive disclosure would enable EPA to provide a website link in response to FOIA requests for information that is publicly available. However, other respondents stated this would not help; they see the volume of complex FOIA requests increasing despite greater use of proactive disclosure.
- **Improve the review and sign-off process in FOIAonline:** In general, authorized officials do not sign off in FOIAonline, and this causes delays: a hard copy must be printed for the authorized official, signed, and scanned back into the system. In addition, the current close-out process in FOIAonline is consecutive rather than concurrent – i.e., the first reviewer must sign off before the second reviewer can see the FOIA request in the system. Some respondents suggested that both reviewers should be able to review the response at the same time.
- **Improve records management:** Respondents for this evaluation, and IEc's review of best practices, indicated that an effective records management system could streamline the FOIA process. While FOIAonline is helpful for locating records, there is room to improve the search functionality in FOIAonline so that internal (EPA) users can locate records more easily, including relevant FOIAs that are "in progress." Overall, respondents suggested that greater uniformity in where records are located would expedite the process of locating records and responding to FOIA requests.
- **Implement "Lean" approaches to FOIA.** Some examples of recommendations from OAR's Lean event include a centralized FOIA process, standardized results from OEI eDiscovery requests, and additional guidance and training. Appendix H contains a short case study synthesizing the results from Lean events across the Agency and highlighting recommendations that may be applicable to other parts of the Agency.
- **Use technology to streamline the process.** This is discussed below under Question 8c.
- **Adopt a centralized FOIA system to enhance efficiency.** This is also discussed below under Question 8c.

Survey respondents also provided responses to an open-ended survey question: "If you could have anything to make your work on FOIA easier, what would it be?" IEc coded and grouped similar responses to identify frequently cited themes. Exhibit 11 provides the top six most frequently cited responses: increase number of FOIA staff, improve FOIAonline, increase FOIA training, improve search technology, improve internal coordination, and create centralized FOIA center/staff.

EXHIBIT 11. TOP SIX MOST FREQUENTLY CITED OPEN-ENDED SURVEY RESPONSES



8. How might changes to the program's organizational structure and/or the adoption of new technologies affect EPA's efforts to ensure the accountability, consistency, and efficiency of the Agency's FOIA program?

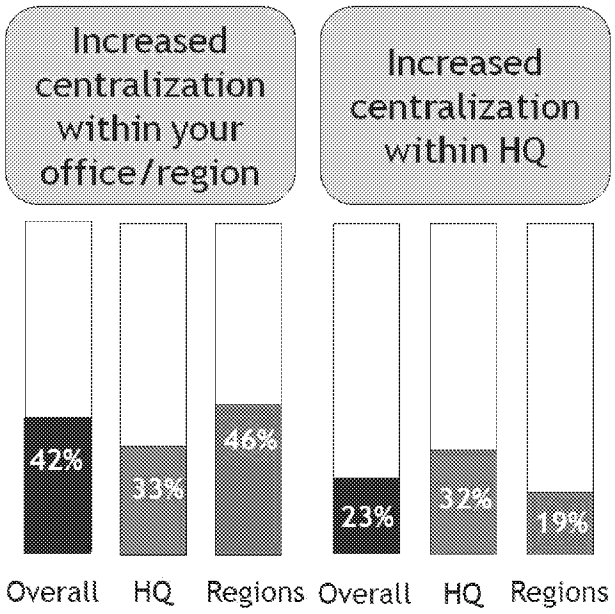
a. In what ways could EPA centralize its FOIA program?

Changes to the program's organizational structure, including options for centralization, are currently under consideration by various parts of the Agency.

The survey asked respondents whether they would be in favor of centralizing within their own office/region, and/or whether they would be in favor of centralizing the FOIA program in a core FOIA group at Headquarters. Overall, 42 percent of respondents were in favor of greater centralization within their own office/region, while 23 percent of respondents favored centralization within a core FOIA group at Headquarters (see Exhibit 12). The difference is statistically significant at a 95 percent confidence level.

IEc also analyzed responses separately for regions and headquarters program offices. Among regional respondents, 46 percent were in favor of increased centralization within their office, while 19 percent approved of increased centralization within a core FOIA group at Headquarters; this difference is statistically significant at a 95 percent confidence level. However, among headquarters program offices, the percent of respondents approving increased centralization within their office (33 percent) was not statistically different from the percent who favored increased centralization within a core FOIA group at Headquarters (32 percent).

EXHIBIT 12. SUPPORT FOR CENTRALIZATION WITHIN OFFICES/REGIONS AND CENTRALIZATION WITHIN A CORE FOIA GROUP AT HEADQUARTERS



b. In what ways could EPA use technology to efficiently manage and process FOIA requests, and/or be proactive in making information publicly available?

Interviews and survey responses identified numerous technologies for processing and collaborating on FOIA requests.[25] The list of technologies and programs that EPA and/or other federal partners use for processing FOIAs includes:

Technologies used by EPA		Other technologies used outside EPA
• FOIAonline	• Equivio	• Blackout
• High-speed scanners	• Ipro	• Clearwell
• Adobe 11	• EnCase	• Omega
• Relativity	• Lotus Notes	• LexisNexis
• eDiscovery searches	• Redact-It	• Max.Gov
• Microsoft Outlook	• Harvester	
• PrimoPDF		

Many interview and survey responses identified methods to leverage already existing resources and software including FOIAonline, OEI eDiscovery, and other FOIA

[25] Due to the evaluation's limited sample size, this list may not be comprehensive of all technologies EPA staff use to process FOIAs.

processing technologies. Other responses suggested EPA provide access to alternative technologies and improved hardware.

Potential technology-related improvements to FOIAonline are discussed in response to evaluation question six. Interviews suggested that improvements to OEI eDiscovery searches might focus on increasing communication between the eDiscovery team and search requesters to provide timely, relevant, non-duplicative, and useable (e.g., not corrupted) records. Interviews identified the need for better distribution of technology currently available, such as Relativity, EnCase, Ipro, and Adobe 11; and additional technology support and expertise to use these technologies.

Interviews also suggest that access to Blackout (an add-on tool for Relativity with additional search and redaction functions) or Clearwell (an alternative to Relativity that utilizes predictive coding with the ability to search, sort, and tag potentially responsive records) could improve FOIA processing. Respondents who process a large number of paper files cited the need for additional/higher-efficiency scanners. FOIAonline users also indicated the desire for bulk upload functionality to FOIAonline in order to streamline the FOIA response process.

c. What are the potential benefits and costs of each of the approaches listed in sub-questions a and b?

The evaluation identified the following potential benefits of centralization:

- **Increased accountability:** Staff in a centralized team report to a FOIA manager, which improves direct accountability for responding to FOIA requests.
- **Greater expertise and specialized knowledge:** Employees who routinely process FOIA requests in a particular subject area build a knowledge base; they also develop expertise in using technologies, such as Relativity, to process requests efficiently.
- **Enhanced intra-Agency FOIA communication and consistency:** Greater centralization and/or coordination of requests across regions and program offices would help ensure that requesters receive a consistent response from each part of the Agency.
- **Improved customer service:** According to one region that currently has a centralized FOIA system; customers receive higher quality responses, and benefit from having a single point of contact throughout the process (the FOIA specialist "owns" the request from beginning to end).
- **Greater latitude for SMEs to focus on other activities:** SMEs, and other individuals who respond to the occasional FOIA request, may lack the expertise to complete their FOIA tasks efficiently and effectively; reallocating these occasional FOIAs to a centralized team would free up SMEs' time while ensuring that a dedicated team of FOIA specialists responds to the request.

On the other hand, the evaluation identified the following potential costs of centralization:

- **Perceived difficulty or infeasibility of dedicating additional FTEs to FOIA:** Interview respondents in multiple program offices and regions stated that while centralization could enhance the efficiency of EPA's FOIA program, the Agency lacks the resources to hire or allocate the additional full-time FOIA staff they feel would be needed for a successful centralized FOIA system.
- **Need for ongoing SME involvement:** Interview respondents in multiple offices and regions stated that SME involvement would still be crucial under a centralized approach; SMEs possess the potentially responsive documents, or know where the documents are located, and would therefore still need to participate in the process.
- **Highly specialized requests / low volume of general requests:** For offices that receive a small total volume of FOIA requests and/or highly specialized requests, a centralized FOIA program may not be efficient. Similarly, in offices with multiple divisions, in which each division receives a small number of highly specialized requests, switching to a centralized approach may not be helpful.
- **Loss of control:** Interviewees in one office stated that some managers are concerned about relinquishing the ability to review all documents before they are publicly released, particularly for sensitive or high-profile matters.
- **Connection to records management:** Some interviewees suggested that the benefits of a centralized approach are greater when there is also a centralized records management system. However, creating a centralized records management system entails additional costs and complexity beyond creating a centralized FOIA program.

The evaluation also considered the benefits and costs of technology for processing FOIA requests. FOIAonline improvements, OEI eDiscovery search improvements, improved hardware, and enhanced training on how to use these resources have the potential to improve consistency and significantly reduce the staff time dedicated to responding to FOIA requests. For example, trained staff can redact information more efficiently through Adobe 11 compared to manual redactions on hard copies. Other electronic tools such as Relativity can help staff to collect, organize, and review documents for release. High-efficiency scanners would reduce the amount of time spent on digitizing documents, and hardware improvements to increase bandwidth would reduce the document upload time for FOIAonline. Although these technologies would reduce costs over time through efficiency gains, each of these technology solutions would entail upfront costs.

Overall, the findings for this evaluation question suggest that greater access to technology is not in itself sufficient to improve the FOIA process, unless people have the knowledge and skills required to use the technology. This, in turn, suggests that technology may need to be coupled with training and IT support, and/or centralized in a core group of specialized staff.

9. How can EPA most effectively leverage the FEAT within the context of ongoing FOIA improvement efforts?

Feedback obtained from the interviews indicates that the FEAT has been helpful in improving the quality and timeliness of EPA's responses to large and complex FOIA requests and could continue to play this role.

EPA can further leverage the FEAT through increased clarification of its role and responsibilities, and increased communication between the National FOIA Office and FEAT. Specific questions to clarify include:

- What specifically triggers FEAT involvement?
- What role does the National FOIA Office play in identifying cases for potential involvement of the FEAT? For example, currently the FEAT and National FOIA Office both review FOIAs, thereby duplicating a step in the process.

In addition, coordinated messaging and information dissemination from both the FEAT and the National FOIA Office would help clarify the FEAT's role across the Agency.

CHAPTER 4 | CONCLUSIONS AND RECOMMENDATIONS

Based on analysis of the data collected through interviews, survey responses, and documents, IEc offers the following conclusions and recommendations for EPA's consideration.

CONCLUSIONS

The evaluation results suggest that:

1. **Overall, the Agency is following the updated FOIA policy and procedures, but many respondents expressed concern about the sign-off requirement.** One of the most significant changes affecting offices/regions is the requirement for authorized officials to sign off on FOIA responses. Some offices had instituted this requirement prior to the updated Agency-wide policy and procedures, but most had not. The sign-off requirement is intended to ensure that all FOIA responses are reviewed by senior-level managers; however, interviews and survey responses indicate this requirement causes delays in the process, with one region noting that it negated the benefits of their previously instituted streamlining efforts. IEc's review of the Agency-wide FOIA policy and procedures also indicates a lack of clarity regarding division directors' authority to sign the response letter sent to requesters. The current procedures allow division directors the authority to issue initial determinations only with a formal re-delegation of authority from administrators or equivalents. However interviews suggest that formal delegation of authority may not be standard across the Agency.
2. **With very few exceptions, there is little variation in the written FOIA procedures across offices/regions.** However, office/regional procedures across the Agency do differ in some ways – mostly in terms of the staff position assigned with implementing steps in the process, rather than the actual process steps. The degree of centralization of the FOIA program in an office or region helps explain this difference in the written procedures.
3. **EPA's FOIA program has a strong reputation among federal agencies; however, EPA's backlog has been growing since 2013.** EPA has seen recent improvement in its speed of processing simple requests (an element of effective systems in place). EPA also typically ranks high in utilization of technology, largely due to the Agency's leadership in FOIAonline. However, EPA had a higher percentage of requests backlogged (approximately 16 percent) at the end of FY 2014 than other federal agencies that had a similar or higher volume of FOIA requests. EPA's backlog has also been growing over the past several years.

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This is due, in part but not entirely, to DOJ's clarification of the definition of "backlog" to include instances in which requesters agree to an extension beyond the 20-day window.

4. **Although written procedures show little variation across the Agency, actual implementation of the FOIA program differs across offices and regions.** The process maps (see Appendix F) indicate multiple areas where the process differs across the Agency, including: who has primary responsibility for collection and review of potentially responsive records, and the process of communicating with requesters. Another major difference is how offices/regions collect data to respond to FOIA requests – e.g., technology uses and knowledge, use and access of FOIAonline, use of OEI eDiscovery services, FEAT involvement, and use of contractor support. Each of these differences can affect accountability and/or consistency. Program performance, as indicated by total and percent backlog and FOIA response time, also varies across offices and regions.

5. **EPA has the opportunity to adopt best practices that may increase accountability in the Agency's FOIA program.** Interviews, survey responses, and literature suggest that EPA could increase accountability by: increasing management support and involvement to ensure that staff respond to FOIA tasks; clarifying the role and responsibilities for each step in the FOIA process; and professionalizing the FOIA Coordinator and Officer roles as Government Information Specialists.

6. **EPA could adopt and/or expand its use of practices to ensure greater consistency in processing and responding to FOIA requests.** The evaluation identified many possibilities to improve consistency; these include: enhancing the functionality and user-friendliness of FOIAonline; improving records management; resolving issues with Outlook e-mail searches; strengthening FOIA staff expertise and limiting turnover; providing training to meet specific needs; clarifying the fee and fee waiver process; using standard templates to ensure consistency in FOIA communication and responses to FOIA requests; developing a list of technologies and databases that are currently available to assist with FOIA requests; and exploring options to centralize the FOIA program within program offices/regions.

7. **Potential streamlining efforts could address a range of inefficiencies in the FOIA process.** The process maps indicate multiple areas where there are delays in the process and confusion about FOIA policy and procedures – particularly the process for fee waivers, handling large FOIA requests, collecting and reviewing potentially responsive records, coordinating with the eDiscovery team, use of FOIA online, and the review and sign-off process. Streamlining measures might include: clarifying roles and responsibilities, particularly for large FOIA requests; increasing the use of proactive disclosure; enhancing the review and sign-off process in FOIAonline; improving records management; adapting relevant Lean findings from individual offices/regions to other parts of the Agency; leveraging

currently existing technology; and, where appropriate, adopting a centralized office/regional FOIA program.

8. **Organizational changes and technology improvements have the potential to significantly improve EPA's FOIA program; however, the potential benefits need to be weighed against the costs.** Various parts of the Agency are considering changes to the program's organizational structure (i.e., centralization). Overall, 42 percent of survey respondents were in favor of greater centralization within their own office/region, while 23 percent of respondents favored centralization within a core FOIA group at Headquarters. Benefits to centralization may include: increased accountability, greater expertise and specialized knowledge, enhanced intra-Agency FOIA communication and consistency, improved customer service, and allowing subject matter experts (SMEs) to focus on their program activities. Potential costs of centralization include: perceived difficulty or infeasibility of dedicating additional FTEs to FOIA, the need for ongoing SME involvement, loss of control for subject matter offices, and connection to and cost of records management.

   The evaluation identified several opportunities to enhance EPA's use of technology to strengthen the FOIA program. However, greater access to technology is not in itself sufficient to improve the process, unless people have the knowledge and skills required to use the technology. FOIAonline improvements, OEI eDiscovery search improvements, improved hardware, and enhanced training on how to use these resources have the potential to improve consistency and significantly reduce the staff time dedicated to responding to FOIA requests. Although these technology improvements would reduce costs over time through efficiency gains, each of these solutions requires upfront expenditures.

9. **EPA can leverage the FEAT by further clarifying the FEAT's role and responsibilities, and by increasing communication and coordination between the National FOIA Office and FEAT.** Feedback obtained from interviews indicates that the FEAT has been helpful in improving the quality and timeliness of EPA's responses to large and complex FOIA requests and could continue to play this role. Clarifying the respective roles and responsibilities of the FEAT and the National FOIA Office, maintaining open and productive communication, and coordinating messaging and information dissemination would help to further integrate the FEAT into EPA's ongoing FOIA improvement efforts.

RECOMMENDATIONS

Based on the evaluation findings and conclusions, IEc offers the following recommendations to strengthen EPA's FOIA program:

Increase Intra-Agency Coordination, Communication, and Accountability *(Evaluation Questions 4,5,6,7,9)*

- **Increase coordination and communication among the FOIA program, FEAT, and eDiscovery.** The FOIA program, FEAT, and eDiscovery team all contribute to EPA's FOIA responses. The consistency and timeliness of some FOIA responses relies, in part, on communication across these groups. Regular meetings with key members from the National FOIA Office, FEAT, and eDiscovery team could help clarify and define the roles and responsibilities for each group and ensure uniform messaging about FOIA across the Agency. Increased coordination between the broader FOIA program and the FEAT may also be achieved through office/regional points of contact with the FEAT. FOIA Coordinators and Officers are well-positioned to fill this role, but may need additional expertise and/or training to meet the demands of improving intra-Agency coordination (see the *Professionalize the FOIA Coordinator and FOIA Officer positions* recommendation below for more information).
- **Increase communication between the eDiscovery team and eDiscovery requesters.** EPA staff often communicate the status of a FOIA request with the requester in order to maintain customer satisfaction. Improved internal communication with the eDiscovery team on the search status and expected response time would help support effective communication with the requester. This is especially important in cases in which the eDiscovery search response time may contribute to a FOIA request becoming backlogged. EPA may consider other measures that increase coordination with the eDiscovery team and help meet the 20-day FOIA response time:
    - Support for constructing effective searches provided either by expert contact person(s) in the offices/regions or a contact person in the eDiscovery team. Well-constructed search parameters facilitate the search and the review process.
    - Additional contractor support for eDiscovery searches.
- **Develop standard operating procedures (SOPs) for processing large FOIA requests involving multiple offices/regions.** Large, multiple office/region FOIA requests pose a unique challenge for EPA; additional guidance is needed to better define the roles and responsibilities of lead and non-lead offices and to increase accountability in responding to these types of requests. The FEAT was developed, in part, to meet the challenges of these large FOIAs. The National FOIA Office and FEAT should work together to develop any potential SOPs. These SOPs might include: 1) the specific FOIA characteristics that trigger FEAT involvement and 2) the process and responsibilities for identifying potential FEAT cases. Currently, both the National FOIA Office and the FEAT review incoming FOIA

requests; although each office reviews FOIAs for different reasons, this process is duplicative. The process may be streamlined if the National FOIA Office uses the aforementioned jointly-developed SOPs to identify FOIAs for potential FEAT involvement. The National FOIA Office might also consider providing contractor support, on an as-needed basis, to offices/regions completing large FOIA requests. If contractor support is provided, any potential SOPs should also include guidance to offices/regions on the type of FOIA requests eligible for contractor support and the process for accessing contractor support.

- **Regularly track and report FOIA task assignments.** Accountability for responding to large, multiple-office/region FOIAs could be improved through regular tracking and reporting of FOIA task assignments. Lead offices make task assignments on FOIAonline to other offices/regions; however, only the lead office has ownership responsibility of the FOIA (e.g., if the FOIA becomes backlogged, only the lead office tracks the "backlogged" status). The FOIA program could help build accountability for responding to FOIA tasks by tracking the response time for FOIA tasks across the Agency and regularly reporting the information to office/regional administrators. An EPA internal FOIA Annual Report comparing intra-Agency performance would be a potential mechanism for this type of reporting.

Leverage Available Technology and Improve FOIAonline *(Evaluation Questions 4,6,7,8)*

- **Develop a technology inventory on available technology, accessibility of the technology, and technology expertise.** FOIA-related technologies and expertise are not evenly distributed across the Agency. A technology inventory would provide information on 1) the technology available for each step of the FOIA process, 2) the process for accessing the available technology (if not readily accessible), and 3) EPA staff and/or contractors with technology expertise who can provide support in using each technology. Such an inventory would be particularly relevant in decentralized systems because of the infrequency that SMEs may receive a FOIA request, and their potential unfamiliarity with FOIA technologies such as FOIAonline, Adobe 11, and Relativity. EPA uses Relativity licenses judiciously (e.g., individuals have access to a license for a limited period of time while working with an eDiscovery search output). As a result, users may lack familiarity with the technology and require technical support. Centralized systems may require less technology support, since centralized FOIA teams build expertise through regular use of the technology in responding to FOIA requests.
- **Work across the Agency to develop SOPs for central records storage.** EPA currently uses the Enterprise Content Management System (ECMS), a centralized electronic content management system that meets the National Archives and Records Administration (NARA) requirements under the Federal Records Act. Cloud Storage, OneDrive, and SharePoint technologies also provide central repositories, but are not currently configured as official recordkeeping systems. Interviews indicate that potentially responsive FOIA records may be located in any or all of the aforementioned repositories, and/or on local EPA computer hard

drives. The FOIA program (including both centralized and decentralized systems) would benefit from clear, well-distributed, Agency-wide guidance to all offices/regions on using central records storage (see the *Combine a centralized FOIA system with improved centralized records management across the Agency* recommendation below for more information). This guidance should consider the ease and speed to upload and download records and the ability to easily search for records in central repositories.

- **Provide step-by-step guidance for using FOIAonline.** Consider adding user prompts in FOIAonline to guide infrequent users through the steps. The FOIAonline website should also include a "how-to" guide sent out in the e-mail informing EPA staff they have received a FOIA or a FOIA task.
- **Improve FOIAonline functionality.** EPA's FOIA program could consider multiple improvements to FOIAonline, including:
    - **Allow batch uploads.** The National FOIA Officer indicates that batch upload functionality is under development for FOIAs processed using Relativity. However, since EPA has a limited number of Relativity licenses, EPA could consider expanding this function for users without access to Relativity.
    - **Create a better feedback mechanism to obtain information on user interface issues.** Despite the availability of the FOIAonline help desk, user interface issues with FOIAonline continue to pose challenges. Different types of interface issues are likely to emerge in the future, and the FOIA program would benefit from a mechanism in place to respond to these issues. This could be addressed with a regularly occurring solicitation to FOIAonline users to submit their feedback on user interface issues.
    - **Enhance efforts that increase authorized officials' use of FOIAonline, and continue to explore the use of digital signatures.** The current process for authorized officials to make initial determinations on the release of records frequently happens outside of FOIAonline; this delays the FOIA process. Easing and simplifying the review of records on FOIAonline would increase authorized officials' use of FOIAonline and streamline the process. The National FOIA Office is currently working with OGC to allow for the use of digital signatures and should continue to explore this option for authorized officials to sign FOIA response letters.
- **Use FOIAonline to provide additional real-time metrics.** FOIAonline has the potential to provide administrative users with additional metrics that could help streamline the FOIA process. For example, data on the most frequent requesters and requested topic areas could be consolidated through a real-time metrics dashboard in FOIAonline. EPA could use this information to identify potential cases for FEAT involvement, or topic areas for proactive disclosure.

Clarify FOIA Policy and Procedures *(Evaluation Questions 1,4,5,7)*

- **Use office/regional SOPs to specify roles and designate responsibilities to EPA staff for completing FOIA tasks.** FOIA procedures vary across the Agency based on the structure of the FOIA program within each office/region. Offices/regions could benefit from designating specific job duties and responsibilities for responding to FOIA requests in their SOPs. These procedures should reference the aforementioned technology inventory. Overall, this recommendation could help provide additional accountability in responding to FOIA requests by designating who is responsible for each step in the process.
- **Clarify division director authorization for initial determinations.** The National FOIA Office is currently coordinating with OGC on steps to authorize division directors to issue initial determinations to release or withhold records in response to FOIA requests. This authorization may require a revision to the FOIA regulations. The current procedures allow division directors the authority to issue initial determinations, but only with a formal re-delegation of authority from administrators or equivalents (Step 14 in the *Procedures for Responding to Freedom of Information Act Requests*). Until updated guidance from OGC and the National FOIA Office is released, and/or until the FOIA regulations are updated, offices/regions should formally delegate authority to division directors. In addition, the National FOIA Office has articulated that the "initial determination to release or withhold records" is synonymous with the response letter to requesters (Step 15). Therefore, as part of the determination process, an authorized official must sign the response letter sent to requesters. The language in the current procedures could be clearer regarding the requirement that authorized officials must sign the response letter.
- **Professionalize the FOIA Coordinator and FOIA Officer positions.** The complexity and frequency of large multiple office/regional FOIAs, the increase in electronic records, and the subsequent expertise needed to retrieve, review, and redact documents places additional demands on FOIA Coordinators. Responsibilities may include: administrative support; project management skills; and subject-based expertise on fee waivers, FOIA-related technologies, and FOIA exemptions. These roles and responsibilities are an important aspect of the FOIA program and could be better met through the professionalization of the FOIA Coordinator and Officer roles as Government Information Specialists. DOJ's 2014 *Guidance on Further Improvement Based on 2014 Chief FOIA Officer Report Review and Assessment* supports the conversion of EPA's FOIA and Privacy Act professionals to the Government Information Series.

Support the Assessment and Implementation of Centralization Options in Program Offices and Regions *(Evaluation Questions 6,7,8)*

- **Encourage program offices and regions to examine the benefits and costs of centralization in their respective office or region.** Study findings merit a renewed focus on whether and/or how offices/regions should centralize their FOIA program. Centralization utilizes a core group of FOIA experts with

specialized knowledge, which may streamline and increase consistency in the FOIA process.

- **Provide support and share knowledge with offices/regions moving towards centralization.** One headquarters division office (Office of Pesticide Programs in the Office of Chemical Safety and Pollution Prevention) and one region (Region 4) currently have centralized FOIA programs; other offices/regions are also considering or currently moving toward centralized FOIA programs (e.g., Office of Air and Radiation, Office of Water, Region 9, and Region 10). The National FOIA Office has the opportunity to learn from the offices/regions moving toward a centralized program and disseminate knowledge across the Agency. For example, the National FOIA Office could analyze impacts on total backlog, percent backlog, response time, and cost per request in centralized versus decentralized programs over time. The National FOIA Office also has the opportunity to consolidate and share qualitative lessons learned from the offices/regions transitioning to centralization. Together, this information would capture the impacts of centralization across the Agency and inform the structure of the FOIA program moving forward.
- **Combine a centralized FOIA system with improved centralized records management across the Agency.** The benefits of centralizing a FOIA program (e.g., consistency and streamlining) are enhanced in offices/regions that consistently use a centralized records repository with an easy-to-use search function (see *Work across the Agency to develop SOPs for central records storage* recommendation). The Agency should leverage existing centralized records repositories (e.g., SharePoint, OneDrive, and Cloud Storage) to the extent that they meet the demands of the FOIA program (e.g., sufficient upload and download speeds, easy-to-use search function, and guidance requiring consistent use of the system). A centralized repository allows a centralized FOIA team to easily obtain potentially responsive records.

  If potentially responsive records are <u>not</u> located in a central repository, the process for retrieving potentially responsive records requires (or may require additional) SME involvement, which often slows the process, and may reduce consistency. Therefore, offices/regions transitioning to a centralized program that do not consistently use a centralized records system across all office/regional divisions may consider developing clear guidance on roles and responsibilities for SMEs in the FOIA process. Offices/regions may also consider tracking SME response time for assigned tasks in order to increase accountability.

Leverage and Learn from Lean Experiences *(Evaluation Question 7)*

- **Leverage lessons learned and focus future Lean events**. Similar to centralization, the National FOIA Office has the opportunity to consolidate and disseminate information from previously conducted FOIA-related Lean events across the Agency. The FOIA Lean case study associated with this evaluation (see Appendix H) provides initial lessons that can be shared. If EPA sponsors additional FOIA-related Lean events in the future, events that focus on

offices/regions with 1) the largest total backlog, 2) large number of requests received, and 3) senior-level commitment may have the largest impact on EPA's overall FOIA performance. The National FOIA Office could also use the results of future FOIA Lean events to consolidate and share lessons learned with the rest of the Agency.

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APPENDIX B: SUMMARY OF PREVIOUS AND ONGOING FOIA IMPROVEMENT EFFORTS

This appendix summarizes EPA's efforts to strengthen the FOIA program from 2001 through mid-February 2015. Significant improvement efforts that IEc reviewed include:

- **2001 FOIA Task Force.** In April 2001, then-Administrator Christine Todd Whitman established a task force to review the current FOIA program, identify any significant weaknesses, and provide recommendations to strengthen the program.[26] The task force findings centered on issues relating to accountability; centralization; and policies, procedures, and guidance. The task force found that FOIA processing was often given extremely low priority, without clearly delineated responsibilities, and senior managers were not being held accountable for FOIA implementation. The task force noted that the highly decentralized nature of the program was linked to problems with consistency and communication. In addition, the task force found that Agency policy and guidance on FOIA were out of date, and Agency employees were not adequately trained on FOIA.

  To address these shortcomings, the task force recommended that EPA should hold senior managers accountable for FOIA, increase the Agency's focus on reducing the backlog of FOIA requests, and designate OEI's Office of Information Collection (OIC) as the lead office for administering FOIA. The report suggested that certain complex FOIA requests, expedited processing, fee waiver determinations, and billing should have central oversight and a lead office designated as the point of contact with the requester. The report recommended that EPA develop a web-enabled tracking and coordinating system to address existing problems and ensure compliance with the Electronic FOIA Amendments of 1996.[27] Finally, the report recommended that EPA update or develop FOIA policies, regulations and guidance, and should develop a FOIA training program for all employees.

- **2011 FOIA Workgroup.** Nearly a decade later, in July 2010, then-Deputy Administrator Perciasepe created a FOIA workgroup to study the effectiveness, efficiency, and transparency of EPA's FOIA program.[28] Completed in June 2011, the workgroup found that EPA made significant improvements in all areas of weakness identified in the 2001 task force report. Key improvements included: establishing a unit in OIC to provide national FOIA administration oversight;

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[26] The Administrator's Deputy Chief of Staff led the Task Force; participants included senior personnel from OEI, OGC, and Region 7, and staff with FOIA responsibilities in various program offices and regions. U.S. Environmental Protection Agency, FOIA Task Force Report, 2001.

[27] The Electronic FOIA Amendments of 1996 required all agencies to make certain types of records available electronically and to provide "electronic reading rooms" to make records more accessible to the public.

[28] The workgroup was co-led by OEI and OGC, and included participants from a variety of program offices and regions.

revising the Agency's FOIA regulations (2002); centralizing the fee waiver and expedited processing decisions in the National FOIA Office (2008/09); acquiring new technology for tracking and managing FOIA submissions; and increasing the accountability of EPA's senior managers for managing FOIA requests.[29] The workgroup found that as a result of the changes implemented since 2001, EPA has built a strong FOIA program and is recognized as a leader across the federal government.[30] From 2001 to 2010, EPA reduced its backlog of FOIA requests by over 98 percent – from over 23,000 backlogged requests in 2001 to 329 backlogged requests in 2010.

Despite the significant improvements in the program since 2001, the 2011 workgroup report identified numerous areas in which EPA could further enhance its FOIA program, including:[31]

- **Accountability:** The workgroup concluded that accountability at the senior management level increased significantly following the 2001 report, but has waned in recent years and has reemerged as a weakness. EPA's performance management system does not include an accountability measure for FOIA compliance or to track if the Agency met its FOIA goals. The report recommended that the National FOIA Office work with EPA's Office of Human Resources (OHR) to develop FOIA critical job elements for all EPA managers, FOIA Officers, and FOIA Coordinators; alternatively, managers could consult the National FOIA Officer for input regarding the performance of employees with FOIA responsibilities. Additionally, the workgroup recommended that Deputy Assistant Administrators (DAAs) and Deputy Regional Administrators (DRAs) be given regular reports on overdue and pending requests.
- **Centralization:** The workgroup report identified numerous challenges related to EPA's decentralized FOIA model, including inconsistency in responses to similar FOIA requests, and difficulty in managing and balancing the backlog of overdue requests across the Agency. For example, subject matter experts – who usually carry out the substantive work in responding to FOIA requests – typically communicate directly with the requester to clarify the request, narrow the scope of the request, extend due dates, and resolve other issues – and may respond directly to the requester with no second-level review. The workgroup noted a limited number of exceptions to the decentralized model: Region 4 and the Office of Pesticide Programs (OPP) have a centralized model with a

[29] U.S. Environmental Protection Agency, Freedom of Information Act Workgroup Report, June 10, 2011.

[30] Freedom of Information Act Workgroup Report, op. cit.

[31] IEc does not include recommendations relating to Confidential Business Information (CBI). However, Appendix B contains all of the recommendations from the workgroup report, and presents their implementation status as of the end of January 2015.

mid-level manager directly responsible for all FOIA responses within the region or office, and dedicated FOIA specialists who perform all FOIA functions. Region 7 has a hybrid (partly centralized) FOIA system. The workgroup recommended that EPA programs and regions that do not already have a centralized program should be required to analyze the costs and benefits of fully centralizing FOIA administration activities within their organizations.

- **FOIA regulations, procedures, and guidance:** The workgroup found that EPA's FOIA regulations 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. EPA's National FOIA Standard Operating Procedures (SOPs) were included in the FOIA Manual last updated in 1992. The workgroup recommended that EPA finalize national SOPs to set minimum processing standards. The workgroup also identified the need to develop guidance on applying the Obama Administration's policy regarding the presumption of openness and identifying and articulating "foreseeable harm."
- **Tools and technologies:** The workgroup noted that many FOIA requests involve large volumes of electronic documents, many of which reside on employees' desktop computers, in e-mail messages, or as attachments to e-mails. Furthermore, some FOIA requests are duplicative or similar to previous FOIA requests, but the Agency's FOIA management and tracking system does not easily identify duplicate requests or store responsive records, or allow the public to review previous requests. In addition, EPA does not have a unified process to identify, review, and proactively release information to the public. Software is needed to identify responsive records in the e-mail system, identify duplicate records, facilitate large document production activities, handle redaction, and manage electronic repositories. The workgroup recommended that EPA should: invest in technology to achieve more efficient processing of FOIA requests; establish a repository of records released under FOIA that the public can search before submitting a FOIA requests; and develop a process to proactively identify and release information to the public.
- **Staff training:** The workgroup report found that while the National FOIA Office and OGC regularly conduct FOIA training, no formal training is required for employees assigned to perform FOIA duties, and not all employees have a basic understanding of FOIA requirements. New employees, employees new to FOIA responsibilities, and staff who need a "refresher" must wait for a scheduled course or conference to receive training. The workgroup recommended establishing and developing FOIA training requirements that include tailored training for different levels of FOIA professionals, and consider using external FOIA

training programs and resources that are already developed, such as training available from DOJ and private organizations.

- **FOIAonline (2012).** In October 2012, EPA launched FOIAonline,[32] an online portal that allows the public to submit FOIA requests, track their progress, communicate with the Agency, search other requests, and access previously released information. Making previous FOIA responses publicly available may preempt future, similar FOIA requests, thereby enhancing openness and transparency, and reducing administrative burden on the agency.
- **Proactive disclosure (ongoing).** In a similar vein, certain offices within EPA have proactively released large amounts of information prior to receiving a FOIA request, leading to significant efficiency gains. For example, EPA's Office of Pesticide Programs (OPP) redesigned its electronic FOIA reading room to make thousands of pesticide science data and regulatory records available without a FOIA request. After making the documents available online, FOIA requests for this type of information dropped from 20 percent to three percent of total requests.[33] However, it appears this practice is not yet widespread across the Agency.
- **eDiscovery, Records, and FOIA Technology (2012 - Present).** In FY2012, EPA established an eDiscovery Workgroup to develop policies and procedures to ensure consistency in EPA's eDiscovery practices.[34] In addition, the eDiscovery Workgroup is "developing and implementing enhanced eDiscovery software services to improve the Agency's management of electronic information potentially responsive to litigation. These services will help us more efficiently identify, collect, preserve, process, review, analyze and produce electronically stored information required to be disclosed as a result of a discovery request."[35] EPA established a Records Workgroup alongside the eDiscovery group (membership in the two workgroups overlaps, and both report to the Quality Information Council).

  In 2013, EPA established the FOIA Technology Subgroup under the Records Workgroup. The FOIA Technology Subgroup aims to identify technology solutions and provide guidance to assist EPA employees in responding to FOIA requests with greater consistency and efficiency. Specifically, the subgroup is addressing challenges that arose when EPA migrated from Lotus Notes e-mail to Outlook e-mail, which have complicated the search process. The goal is to obtain responsive records more easily and in a more useable format, allowing multiple

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[32] EPA developed FOIAonline based on the existing Regulations.gov website. Though developed by EPA, other agencies also use FOIAonline.

[33] U.S. Environmental Protection Agency, "EPA's FOIA Program." Undated.

[34] U.S. Environmental Protection Agency. Report on Managing Government Records. March 27, 2012.

[35] Ibid.

offices to review the files simultaneously, redact information, and better manage the workflow process. Technologies currently under consideration include, among others: Relativity platform (EPA currently owns 50 licenses), EnCase, and Adobe 11.

- **OIG reports (2014).** EPA's FOIA program has been the subject of various OIG reports over the years[36] – mostly recently, in May and July 2014. The May 2014 report, *Review of EPA's Process to Release Information Under the Freedom of Information Act*, addressed concerns about possible inconsistencies in how EPA decides what information to release under FOIA. OIG reviewed FOIA procedures in all 10 regions and in four headquarters program offices. All offices, except one, had internal written procedures; however, seven of the 14 offices that OIG reviewed had procedures that were not consistent with EPA's interim FOIA procedures. In general, the procedures did not include language regarding the use of FOIAonline, or were "silent" or "unclear" regarding who has authority to sign EPA letters responding to FOIA requests.[37] OIG recommended that the Assistant Administrator for Environmental Information should (1) issue final FOIA procedures by September 30, 2014; and (2) require that senior information officials in each region and headquarters program office certify that their local FOIA procedures are consistent with the Agency's final procedures by March 31, 2015. Management agreed with both recommendations, and issued final FOIA procedures in September 2014 (see below).

  In July 2014, OIG issued another report, entitled *No Indications of Bias Found in a Sample of Freedom of Information Act Fee Waiver Decisions But the EPA Could Improve Its Process.*[38] EPA's Deputy Administrator requested the review to determine whether fee waiver determinations were completed in a timely and unbiased manner. OIG found no indications of bias in the fee waiver decisions reviewed. However, 47 percent of responses that OIG reviewed exceeded the goal of 10 business days (the average response time was 12 business days, but this was highly variable). Seventy-one percent of free waiver appeal decisions that OIG reviewed exceeded the goal of 20 business days. OIG recommended that the Administrator for Environmental Information and the General Counsel examine and address the reasons for variability in response times. The study also recommended that the Assistant Administrator for Environmental Information clarify what requesters must demonstrate under each factor to receive a fee waiver, clarify EPA's approach on when to request additional justification, and inform the public of enhancements to the EPA's website and other efforts to

[36] A review conducted by OIG in 2009 recommended that EPA standardize FOIA procedures at a national level, and it was shortly after this report that the Agency decided to centralize all fee waiver determinations in the National FOIA Office. Freedom of Information Act Workgroup Report, June 2011, op. cit.

[37] U.S. Environmental Protection Agency Office of Inspector General, Briefing Report: Review of EPA's Process to Release Information Under the Freedom of Information Act. Report No. 14-P-0262, May 16, 2014.

[38] U.S. Environmental Protection Agency Office of Inspector General. No Indications of Bias Found in a Sample of Freedom of Information Act Fee Waiver Decisions But the EPA Could Improve Its Process. Report No. 14-P-0319. July 16, 2014.

explain what must be demonstrated under each factor. The EPA concurred with OIG's recommendations.

- **FOIA Expert Assistance Team (August 2014 – Present).** Senior management created the FEAT to address concerns about the consistency and timeliness of FOIA responses. Located in OGC, the FEAT is intended as a "strategically centralized solution" that reviews all incoming FOIA requests, and advises and coordinate on complex or sensitive FOIAs.[39] While the FEAT identifies cases that might benefit from its involvement, program offices and regions may also request assistance from the FEAT. The FEAT does not replace EPA's existing (largely decentralized) processing model, but serves as "case managers" for requests that are large, span multiple offices, and/or involve particularly sensitive information. A Team Leader was recruited in August 2014 to stand up the FEAT. Once fully staffed, the FEAT will have six FTEs.

  From August through October 2014, the FEAT "beta tested" its review process, reviewing over 2,600 incoming FOIA requests and identifying 225 as candidates for FEAT involvement. In addition, the FEAT has already responded to requests for assistance from program and regional offices. These cases included multiple requests from a single requester to multiple offices requesting the same or similar information; coordination across offices on the release of sensitive information; and voluminous requests. The FEAT continues to test and gather feedback on the process while it recruits the remaining staff.

- **Updated FOIA policy and procedures (September 2014).** In September 2014, OEI issued final updated FOIA policy and procedures. The updated policy requires EPA personnel to process FOIA requests using the management and tracking system approved by the Chief FOIA Officer. Responsive records are to be released unless a mandatory exemption applies, or if EPA determines that foreseeable harm would result from disclosing the materials. At least two individuals, including one manager, must review all documents before they are released to the public. In addition, the policy stipulates that FOIA duties will be critical elements in the performance agreements of FOIA professionals, and FOIA professionals will take mandatory annual trainings identified by the Agency FOIA Officer. Agency managers will also have critical job elements in their performance agreements to ensure that their staff have the knowledge, skills, and abilities to perform their duties and respond to requests in a timely manner.[40]

  The updated FOIA procedures provide basic instructions for responding to FOIA requests, including 16 steps that all organizations within EPA need to follow.[41] The procedures also require the use of FOIAonline for managing FOIA requests,

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[39] U.S. Environmental Protection Agency. FOIA Expert Assistance Team (FEAT). PowerPoint presentation. November 2014.

[40] U.S. Environmental Protection Agency. Freedom of Information Act Policy. September 30, 2014.

[41] U.S. Environmental Protection Agency. Procedures for Responding to Freedom of Information Act Request. September 30, 2014.

and stipulate that all records released in response to requests should be entered into FOIAonline for public viewing and searching (with limited exceptions). Organizations have six months to bring their procedures into conformity with the updated procedures.

- **Lean events.** Four EPA organizations recently conducted Lean events to improve the efficiency of their FOIA processes: OAR, Region 3, Region 7, and Region 10. IEc has received materials from these organizations. IEc also intends to interview the Lean event coordinators for each organization during the implementation phase of this evaluation. Details about the Lean outputs that IEc has received are included in the main body of this document.

APPENDIX C: LIST OF INTERVIEWEES

INTERVIEW TYPE	NAME	INTERVIEW CATEGORY	ORGANIZATION / TITLE
Group	Lauren Lemley	EPA FOIA Coordinators and Officers	OARM FOIA Coordinator
	Janice Jablonski	EPA FOIA Coordinators and Officers	OPRM Information and Human Resources Team Leader/OARM Assistant Administrator for Admin. and Resources Management
Individual	Diane Jones-Coleman	EPA FOIA Coordinators and Officers	OW FOIA Coordinator
Individual	Maya Newman	EPA FOIA Coordinators and Officers	OECA FOIA Coordinator
Individual	Larry Gottesman	EPA FOIA Coordinators and Officers; Scoping	OEI National FOIA Officer
Individual	Yvette Hopkins	EPA FOIA Coordinators and Officers	Acting Chief, Public Information and Records Integrity Branch
Group	Marilyn Malloy	EPA FOIA Coordinators and Officers	OCSPP FOIA Coordinator
	Colby Litner	EPA FOIA Coordinators and Officers	OCSPP, OPPT, FOIA Coordinator
	Paul Cestone	EPA FOIA Coordinators and Officers	OCSPP, OPPT, National Chemical Programs Division, FOIA Coordinator
	Earl Ingram	EPA FOIA Coordinators and Officers	OCSPP, OPP FOIA Coordinator
Individual	Linda Person	EPA FOIA Coordinators and Officers	OEI FOIA Specialist
Individual	Wanda McLendon	EPA FOIA Coordinators and Officers	OSWER FOIA Coordinator
Individual	Scott Levine	EPA FOIA Coordinators and Officers	OIG FOIA Coordinator
Individual	Diane Salahuddin	EPA FOIA Coordinators and Officers	OCFO FOIA Coordinator & Management Analyst
Individual	Peter Evanko	EPA FOIA Coordinators and Officers	ORD FOIA Coordinator
Group	Cristeen Schena	EPA FOIA Coordinators and Officers	Region 1 FOIA Officer
	Fred Weeks	EPA FOIA Coordinators and Officers	Region 1 OARM Deputy Director
	Alice Kaufman	EPA FOIA Coordinators and Officers	Region 1 Operations Manager
Individual	Wanda Calderon	EPA FOIA Coordinators and Officers	Region 2 FOIA Assistant
Individual	Louann Gross	EPA FOIA Coordinators and Officers; Scoping	Region 4 Information Access Chief

INTERVIEW TYPE	NAME	INTERVIEW CATEGORY	ORGANIZATION / TITLE
Individual	Jessica Wheatley	EPA FOIA Coordinators and Officers	Region 5 Acting FOIA Officer
Individual	Leticia Lane	EPA FOIA Coordinators and Officers	Region 6 FOIA Officer
Individual	Emily Albano	EPA FOIA Coordinators and Officers	Region 7 Acting FOIA Officer
Individual	Alan V.J.S. Engels	EPA FOIA Coordinators and Officers	Region 8 Acting FOIA Officer
Individual	Ivry Johnson	EPA FOIA Coordinators and Officers	Region 9 FOIA Officer
Individual	Stephanie Kercheval	EPA FOIA Coordinators and Officers	Region 10 FOIA Specialist
Group	Bob Kaplan	Office of Regional Counsel	Region 5 Regional Counsel and former Head of E-Discovery Workgroup
	David Hoff	EPA FOIA Coordinators and Officers	Region 5 Search Point of Contact (SPOC)
Group	Yerusha Beaver	Office of Regional Counsel	Region 6 Office of Regional Counsel Attorney
	Ben Harrison	Office of Regional Counsel	Region 6 Office of Regional Counsel
Group	Robert Hartman	Office of Regional Counsel	Region 10 FOIA Attorney
	Jennifer MacDonald	Office of Regional Counsel	Region 10 Back Up FOIA Attorney
	Shannon Connery	Office of Regional Counsel	Region 10 ORC FOIA Coordinator
Individual	John Connell	EPA subject matter expert with FOIA responsibilities	OECA Subject Matter Expert
Individual	Jennifer Hovis	EPA subject matter expert with FOIA responsibilities	OSWER Subject Matter Expert
Individual	Margaret Collins	EPA subject matter expert with FOIA responsibilities	Region 8 Subject Matter Expert
Individual	Lillie Davis	EPA subject matter expert with FOIA responsibilities	Region 5 Subject Matter Expert
Individual	Kim Owens	EPA subject matter expert with FOIA responsibilities	Region 10 Subject Matter Expert
Individual	Rebecca Moser	Senior managers in OEI	Deputy Director, Office of Information Collection, OEI
Individual	Constance Downs	Senior managers in OEI	Acting Division Director, Collection Strategies Division, OEI
Group	Kevin Miller	FOIA Technology Sub-group; Scoping	Assistant General Counsel at OGC and Co-Chair of Records Workgroup
	Jennifer Hammit	FOIA Technology Sub-group; Scoping	Attorney-Advisor; Co-chair of FOIA Technology Sub-group
Individual	Jonathan Lubetsky	Lean FOIA experts	OAR Policy Analyst; OAR Document Request Production Lean Event: Congressional Team Leader

INTERVIEW TYPE	NAME	INTERVIEW CATEGORY	ORGANIZATION / TITLE
Individual	Larry Weinstock	Lean FOIA experts	OAR Program Innovation Coordinator; OAR Document Request Production Lean Event: FOIA Team Leader
Group	Curtis Carey	Lean FOIA experts	Region 7, OPA, Lean Event Project Champion
	Margie St. Germain	Lean FOIA experts	Region 7 FOIA Lean Contact
Group	Benita Gramm	Lean FOIA experts	Region 3 APD
	Kimberly Scalia	Lean FOIA experts	Region 3 CBPO
	Rita Tate	EPA FOIA Coordinators and Officers	Region 3 Acting FOIA Officer
Individual	Denise Walker	FEAT personnel	FEAT Attorney
Individual	Becky Dolph	FEAT personnel; Scoping	FEAT Acting Director
Individual	Christopher Durso	FOIA manager at OSHA	National Office FOIA Coordinator, U.S. DOL, OSHA
Individual	Bobby Talebian	DOJ representative familiar with EPA FOIA Program	Chief FOIA Compliance Staff DOJ/OIP
Individual	Renee Clark	Senior managers in OEI; Scoping	FOIA Public Liason
Individual	Renee Wynn	Senior managers in OEI; Scoping	Acting AA and Acting CIO

APPENDIX D: INTERVIEW GUIDES

INTERVIEW GUIDE FOR FOIA OFFICERS AND FOIA COORDINATORS

BACKGROUND

1. What is your current position at EPA?
    a. How long have you been in your current position?
    b. What previous positions have you held with EPA?
2. Have you ever received FOIA training?
    a. If yes, can you recall about how many FOIA trainings you have attended?
    b. If yes, who provided the training (e.g., National FOIA Office; program/regional office; etc.)?
    c. If yes, can you recall the date (month/year) of the most recent FOIA training that you attended?
3. Have you ever offered FOIA training for staff in your program office or region?
    a. If yes, can you recall about how many FOIA trainings you have offered?
    b. If yes, can you recall the date (month/year) of the most recent FOIA training that your program office/region offered?
4. Approximately what percentage of your time do you spend on FOIA compared to your other job responsibilities?

STATUS OF FOIA PROGRAM IN YOUR OFFICE OR REGION *[QUESTIONS 4, 4A, AND 4B]*

5. Does your office or region have a centralized, decentralized, or hybrid FOIA program?[42]
    a. How, if at all, do you think the structure (centralized, decentralized, or hybrid) of the FOIA program affects the FOIA process and outcomes in your office or region?
6. **[Placeholder: Ask about trends in FOIA performance data and staffing data for the individual office/region once IEc has pulled benchmarking data. What is driving FOIA performance and staffing figures?]**
7. What aspects of the FOIA program are working well in your office/region?

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[42] A "centralized" FOIA model is one in which dedicated FOIA Specialists (who do not have collateral job responsibilities) perform all FOIA functions in their office/region, and report to a manager who is directly responsible for all FOIA responses within the office/region. In a "decentralized" model, a FOIA Coordinator or FOIA Officer processes incoming requests and assigns them to the appropriate regional or program contact, who in turn assigns requests to subject-matter experts (whose main job is typically not FOIA) who locate the relevant records. A "hybrid" FOIA program includes elements of a centralized and decentralized system - e.g., a dedicated FOIA manager, but no dedicated FOIA Specialists.

8. Are there any aspects of the FOIA program in your office/region that could be improved?
    a. If yes, please describe.
9. What technologies do you currently use to process FOIA requests?

    The interviewer will first ask the question in an open-ended format and record responses. Then, the interviewer will read the following list of prompts and record responses for each prompt.

    Prompts:

    a. Workflow management and communications software

    b. Software to help identify records and e-mails

    c. Software to help search for similar FOIA requests (i.e., previous FOIA requests that addressed similar topics or records)

    d. Software to help with redaction
10. Do you have adequate access to the technology you need to process FOIA requests?
    a. If no, what capabilities are lacking?
11. What do you see as barriers to greater efficiency in processing FOIA requests in your office or region?

    The interviewer will first ask the question in an open-ended format and record responses. Then, the interviewer will read the following list of prompts and record responses for each prompt.

    Prompts:

    a. Inconsistent implementation of FOIA procedures

    b. Confusion about FOIA procedures

    c. Confusion about FOIA policy

    d. Not enough staff time dedicated to FOIA processing

    e. Fragmented FOIA processing (too many different people or offices working on the same requests)

    f. Trouble finding relevant records and e-mails

    g. Inefficiencies in documenting responses

    h. Inefficiencies in communicating with others about workflow

    i. Inefficiencies in redaction process

    j. Other (specify)
12. The current study looks at the accountability and consistency of the Agency's FOIA program. Based on the experience in your office or region:

a. What do you see as the most important factors for ensuring the accountability of employees to the FOIA program?[43]

b. What do you see as the most important factors for ensuring the consistency of the FOIA process?[44]

CURRENT PROCESS *[QUESTIONS 4, 4A, AND 4B]*

13. The attached diagram shows a simplified, generic EPA FOIA process map. ***[Attach diagram]*** We understand that not every region or program office follows the same sequence of steps to process FOIA requests, and some offices or regions may not undertake all steps. With that said, we are trying to capture the key elements of the process both to identify potential areas for improvement and as a communication tool. With this context in mind:

    a. To what extent does the FOIA process in your office or region follow the process shown in the diagram?

    b. Are we missing any important steps in the process map?

        i. If yes, please identify the step(s) and where it (they) belong(s) on the map.

        ii. Are these steps that you deem to be important for all offices/regions, or specifically for your office? Why?

    c. Are any steps shown out of order?

        i. If yes, please identify the step(s) and indicate the correct order.

    d. Where in the process do things tend to get significantly delayed or "stuck"?

        i. Please identify the step(s) and explain.

14. Within your office/region, who (division/program office[45]) is typically involved in processing a FOIA request?

    a. Please identify which step(s) each party works on.

    b. Who (division/program office) within your office or region has contact with the requester?

        i. At which step(s) in the process does contact with the requester occur?

    c. What is the process in your office or region for redacting or withholding information?

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[43] We define accountability in terms of (1) how staff and mid-level managers respond to FOIA requests, and (2) the extent to which senior managers commit to meeting (and achieve) the Agency's FOIA goals.

[44] We define consistency (1) within and (2) across program offices/regions. (1) A program office/region is internally consistent if it follows the same or similar process for responding to the same or similar FOIA request. (2) Program offices and regions are consistent across one another if they respond to the same or similar FOIA request in the same or similar manner.

[45] Examples: Front Office; Public Affairs Office; Office or Regional Counsel; etc.

i. Who (division/program office) is involved in making, or reviewing, the determination to redact or withhold information?

ii. At which step(s) in the process does this occur?

d. What is the process in your office or region for assessing "foreseeable harm"?

i. Who (division/program office) is involved in making, or reviewing, the assessment of foreseeable harm?

ii. At which step(s) in the process is this determination made?

e. In what situations, if any, does a manager review potentially responsive records before they are publicly released?

i. At which step(s) in the process is this review conducted?

f. In what circumstances does your office or region coordinate with other offices/regions to process FOIA requests?

i. How often does this occur?

ii. Please identify the step(s) where you coordinate with other offices/regions.

15. We understand that FOIA requests can be "simple" or "complex."

a. How do you assign FOIA requests to each track?

b. Is the process different for the "simple" and "complex" track?

i. If yes, please describe the main differences and where they appear on the process map.

c. How many hours do you spend working on FOIA requests – specifically:

i. Minimum number of hours

ii. Maximum number of hours

iii. Average number of hours?

d. Does the number of hours that you spend working on a FOIA request depend on whether it is a *simple* or *complex* request?

i. If yes, please explain.

16. Do you have any other comments or suggestions on the process map?

UPDATED FOIA PROCEDURES *[QUESTIONS 1, 2 AND 2A]*

17. On September 30, 2014, EPA's Chief Information Officer issued updated Agency-wide FOIA policy and procedures documents. Program offices and regions were required to develop or update their written FOIA procedures by March 31, 2015.

a. How, if at all, have your office's or region's FOIA procedures changed following the updated Agency-wide FOIA procedures?

The interviewer will first ask the question in an open-ended format and record responses. Then, the interviewer will read the following list of prompts and record responses for each prompt.

Prompts:

i. *Use of FOIAonline to manage all FOIA requests.*

ii. *Use of a management and tracking system to process all FOIA requests.*

iii. *Review of documents before releasing them to the requester.*

iv. *Consistent release of records unless one of the mandatory exemptions applies or if a determination of foreseeable harm is made.*

v. *Provision of annual FOIA training.*

vi. *FOIA responsibilities included in personnel performance agreements.*

vii. *Other (specify).*

b. (If applicable) Please indicate where these changes appear on the process map.

c. **[Placeholder: If applicable, ask about specific aspects of the office or region's organization-specific FOIA procedures that need clarification, including why they designed their procedures the way they did.]**

d. How, if at all, did you communicate these changes to staff in your office/region?

e. How have these changes been received by staff?

f. What is the schedule for implementing each major change? If you have already implemented a major change following the new procedures, please describe the change and when it was implemented.

[NOTE: If the interviewee's office or region held a FOIA Lean event, and the interviewee is knowledgeable about the Lean event and its outcomes, we will ask the following Lean questions. Otherwise, we will skip to "Program Improvement Efforts in Your Office or Region."]

LEAN EVENT GOALS, SCOPE, AND RECOMMENDATIONS *[QUESTIONS 4A AND 4B]*

18. Are you aware of any FOIA improvement efforts that your office or region contemplated or implemented prior to initiating the Lean Event?

    a. If yes, please describe. When did it occur? What topics/processes were addressed? What were the results?

19. Why did your office or region initiate the FOIA Lean Event?

20. Please describe the purpose, goals, and scope of the Lean Event.

21. Who participated in the Lean Event?
22. What major barriers or "pain points" did the Lean Event uncover?
23. What recommendations came out of the Lean Event?
24. What were the most significant differences between the "as-is" process and the "to-be" process? *(Probe: Reduction in number of steps; enhanced coordination; use of new/improved technologies; centralization; other)*
    a. (If applicable) Do you have materials on the "as-is" process, the "to-be" process, the Lean Event report-out, and/or other relevant documents that you can share with us?

LEAN FOLLOW-UP *[QUESTIONS 5, 6, AND 7]*

25. What recommendations from the FOIA Lean Event have you implemented to date?
    a. When did you implement the changes?
    b. What results, if any, have you observed following the changes?
26. What additional recommendations, if any, are you still planning to implement?
    a. What are the current status and expected timing of these changes?
27. Are there any recommendations that got "stuck," or that you have decided not to implement at the present time?
    a. If yes, please explain.
28. Can you estimate the benefits and costs (quantitative or qualitative) associated with:
    a. Recommendations that you have already implemented?
    b. Recommendations that you are in the process of implementing?
    c. Recommendations that stalled or that you have decided not to implement?
29. Aside from the Lean Event, have any other changes occurred that have affected the FOIA program in your office or region (if yes, describe)?
    a. (If applicable) How have these changes affected FOIA performance in your office or region?
30. Would you recommend that other EPA offices or regions implement a FOIA Lean Event?
    a. Why or why not?

PROGRAM IMPROVEMENT EFFORTS IN YOUR OFFICE OR REGION *[QUESTIONS 5, 6, AND 7]*

31. What [other] actions has your program office or region considered to improve the efficiency and effectiveness of the FOIA program [since the FOIA Lean event]?
    a. Which of these improvements were implemented, and when?

b. What was the result of these improvements on processing speed and consistency?

32. What opportunities do you see to further streamline FOIA processing in your office or region?

The interviewer will first ask the question in an open-ended format and record responses. Then, the interviewer will read the following list of prompts and record responses for each prompt.

Prompts:

a. *Increased centralization of FOIA responsibilities with a smaller group of staff in my office*

b. *Increased centralization of FOIA responsibilities within a core FOIA group at HQ*

c. *Increased centralization of FOIA responsibilities within the program office or region*

d. *Increased centralization – other (specify)*

e. *Greater use of proactive disclosure*

f. *Testing new technologies to manage the FOIA process*

g. *Holding a FOIA Lean event*

33. Where do you see the greatest potential for improving the accountability and consistency of the FOIA program in your office or region?

a. What approaches do you think might help bring about these changes?

b. Are you aware of other program offices or regions that have implemented these approaches?

i. If yes, do you know the results of their efforts?

INTRA-AGENCY PROGRAM IMPROVEMENT EFFORTS *[QUESTIONS 8, 8A, 8B, 8C, AND 9]*

34. Some parts of the Agency have identified technology solutions to enhance FOIA processing (e.g., redaction software). To what extent, if any, would new or improved technologies improve FOIA processing in your office or region?

a. (If applicable) What new or enhanced capabilities would these technologies provide?

b. Do you have any thoughts about specific technology solutions that would provide these capabilities?

i. If yes, what are they?

35. Some offices and regions have taken steps to partly or fully centralize their FOIA programs.

a. What do you see as the benefits and costs of a centralized approach to FOIA administration for your office or region?

b. Do you think that a centralized approach is appropriate for your office/region?

   i. Why or why not?

36. EPA recently established a FOIA Expert Assistance Team (FEAT) within the Office of General Counsel to provide assistance in the FOIA process.

    a. To date, has your office or region used the FEAT?

       i. If yes, what was your experience?

    b. Moving forward, do you anticipate your office or region using the FEAT?

       i. If yes, in what capacity?

       ii. If no, why not?

INTERVIEW GUIDE FOR OFFICES OF REGIONAL COUNSEL

BACKGROUND

1. What is your current role at ORC?
    a. How long have you been in your current position?
    b. What previous positions have you held with EPA?
2. How many FOIA cases are you currently working on?
3. Approximately what percentage of your caseload consists of FOIA cases? What percentage of your time do you spend on FOIA cases?
4. What triggers ORC's involvement in a FOIA case?

STATUS OF FOIA PROGRAM IN YOUR OFFICE OR REGION *[QUESTIONS 4, 4A, AND 4B]*

5. Does your office or region have a centralized, decentralized, or hybrid FOIA program?[46]
    a. How, if at all, do you think the structure (centralized, decentralized, or hybrid) of the FOIA program affects the FOIA process and outcomes in your office or region?
6. **[Placeholder: Ask about trends in FOIA performance data and staffing data for the individual office/region once IEc has pulled benchmarking data. What is driving FOIA performance and staffing figures?]**
7. What aspects of the FOIA program are working well in your office/region?
8. Are there any aspects of the FOIA program in your office/region that could be improved?
    a. If yes, please describe.
9. What technologies does your office or region currently use to process FOIA requests?

    The interviewer will first ask the question in an open-ended format and record responses. Then, the interviewer will read the following list of prompts and record responses for each prompt.

    Prompts:

    a. Workflow management and communications software

    b. Software to help identify records and e-mails

---

[46] A "centralized" FOIA model is one in which dedicated FOIA Specialists (who do not have collateral job responsibilities) perform all FOIA functions in their office/region, and report to a manager who is directly responsible for all FOIA responses within the office/region. In a "decentralized" model, a FOIA Coordinator or FOIA Officer processes incoming requests and assigns them to the appropriate regional or program contact, who in turn assigns requests to subject-matter experts (whose main job is typically not FOIA) who locate the relevant records. A "hybrid" FOIA program includes elements of a centralized and decentralized system - e.g., a dedicated FOIA manager, but no dedicated FOIA Specialists.

c. *Software to help search for similar FOIA requests (i.e., previous FOIA requests that addressed similar topics or records)*

d. *Software to help with redaction*

10. Does your office or region have adequate access to the technology you need to process FOIA requests?

    a. If no, what capabilities are lacking?

11. What do you see as barriers to greater efficiency in processing FOIA requests in your office or region?

    The interviewer will first ask the question in an open-ended format and record responses. Then, the interviewer will read the following list of prompts and record responses for each prompt.

    Prompts:

    a. *Inconsistent implementation of FOIA procedures*

    b. *Confusion about FOIA procedures*

    c. *Confusion about FOIA policy*

    d. *Not enough staff time dedicated to FOIA processing*

    e. *Fragmented FOIA processing (too many different people or offices working on the same requests)*

    f. *Trouble finding relevant records and e-mails*

    g. *Inefficiencies in documenting responses*

    h. *Inefficiencies in communicating with others about workflow*

    i. *Inefficiencies in redaction process*

    j. *Other (specify)*

12. The current study looks at the accountability and consistency of the Agency's FOIA program. Based on the experience in your office or region:

    a. What do you see as the most important factors for ensuring the accountability of employees to the FOIA program?[47]

    b. What do you see as the most important factors for ensuring the consistency of the FOIA process?[48]

    c. How do these factors influence the number and type of FOIA cases that ORC works on?

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[47] We define accountability in terms of (1) how staff and mid-level managers respond to FOIA requests, and (2) the extent to which senior managers commit to meeting (and achieve) the Agency's FOIA goals.

[48] We define consistency (1) within and (2) across program offices/regions. (1) A program office/region is internally consistent if it follows the same or similar process for responding to the same or similar FOIA request. (2) Program offices and regions are consistent across one another if they respond to the same or similar FOIA request in the same or similar manner.

CURRENT PROCESS *[QUESTIONS 4, 4A, AND 4B]*

13. The attached diagram shows a simplified, generic EPA FOIA process map. ***[Attach diagram]*** We understand that not every region or program office follows the same sequence of steps to process FOIA requests, and some offices or regions may not undertake all steps. With that said, we are trying to capture the key elements of the process both to identify potential areas for improvement and as a communication tool. With this context in mind:
    a. To what extent does the FOIA process in your office or region follow the process shown in the diagram?
    b. Are we missing any important steps in the process map?
        i. If yes, please identify the step(s) and where it (they) belong(s) on the map.
        ii. Are these steps that you deem to be important for all offices/regions, or specifically for your office? Why?
    c. Are any steps shown out of order?
        i. If yes, please identify the step(s) and indicate the correct order.
    d. Where in the process do things tend to get significantly delayed or "stuck"?
        i. Please identify the step(s) and explain.
14. Within your office/region, who (division/program office[49]) is typically involved in processing a FOIA request?
    a. Please identify which step(s) each party works on.
    b. Who (division/program office) within your office or region has contact with the requester?
        i. At which step(s) in the process does contact with the requester occur?
    c. What is the process in your office or region for redacting or withholding information?
        i. Who (division/program office) is involved in making, or reviewing, the determination to redact or withhold information?
        ii. At which step(s) in the process does this occur?
    d. What is the process in your office or region for assessing "foreseeable harm"?
        i. Who (division/program office) is involved in making, or reviewing, the assessment of foreseeable harm?
        ii. At which step(s) in the process is this determination made?

[49] Examples: Front Office; Public Affairs Office; Office or Regional Counsel; etc.

e. In what situations, if any, does a manager review potentially responsive records before they are publicly released?

   i. At which step(s) in the process is this review conducted?

f. In what circumstances does your office or region coordinate with other offices/regions to process FOIA requests?

   i. How often does this occur?

   ii. Please identify the step(s) where you coordinate with other offices/regions.

15. We understand that FOIA requests can be "simple" or "complex."

    a. How do you assign FOIA requests to each track?

    b. Is the process different for the "simple" and "complex" track?

       i. If yes, please describe the main differences and where they appear on the process map.

    c. Of the FOIA cases that ORC works on, how many hours do you spend – specifically:

       i. Minimum number of hours

       ii. Maximum number of hours

       iii. Average number of hours?

    d. Does the number of hours that you spend working on a FOIA request depend on whether it is a *simple* or *complex* request?

       i. If yes, please explain.

16. Do you have any other comments or suggestions on the process map?

UPDATED FOIA PROCEDURES *[QUESTIONS 1, 2 AND 2A]*

17. On September 30, 2014, EPA's Chief Information Officer issued updated Agency-wide FOIA policy and procedures documents. Program offices and regions were required to develop or update their written FOIA procedures by March 31, 2015.

    a. How, if at all, have your office's or region's FOIA procedures changed following the updated Agency-wide FOIA procedures?

       The interviewer will first ask the question in an open-ended format and record responses. Then, the interviewer will read the following list of prompts and record responses for each prompt.

       Prompts:

       i. Use of FOIAonline to manage all FOIA requests.

       ii. Use of a management and tracking system to process all FOIA requests.

       iii. Review of documents before releasing them to the requester.

iv. *Consistent release of records unless one of the mandatory exemptions applies or if a determination of foreseeable harm is made.*

v. *Provision of annual FOIA training.*

vi. *FOIA responsibilities included in personnel performance agreements.*

vii. *Other (specify).*

b. (If applicable) Please indicate where these changes appear on the process map.

c. **[Placeholder: If applicable, ask about specific aspects of the office or region's organization-specific FOIA procedures that need clarification, including why they designed their procedures the way they did.]**

d. How, if at all, did you communicate these changes to staff in your office/region?

e. How have these changes been received by staff?

f. What is the schedule for implementing each major change? If you have already implemented a major change following the new procedures, please describe the change and when it was implemented.

PROGRAM IMPROVEMENT EFFORTS IN YOUR OFFICE OR REGION *[QUESTIONS 5, 6, AND 7]*

18. What [other] actions has your program office or region considered to improve the efficiency and effectiveness of the FOIA program [since the FOIA Lean event]?

    a. Which of these improvements were implemented, and when?

    b. What was the result of these improvements on processing speed and consistency?

19. What opportunities do you see to further streamline FOIA processing in your office or region?

    The interviewer will first ask the question in an open-ended format and record responses. Then, the interviewer will read the following list of prompts and record responses for each prompt.

    Prompts:

    a. *Increased centralization of FOIA responsibilities with a smaller group of staff in my office*

    b. *Increased centralization of FOIA responsibilities within a core FOIA group at HQ*

    c. *Increased centralization of FOIA responsibilities within the program office or region*

    d. *Increased centralization – other (specify)*

e. *Greater use of proactive disclosure*

f. *Testing new technologies to manage the FOIA process*

g. *Holding a FOIA Lean event*

20. Where do you see the greatest potential for improving the accountability and consistency of the FOIA program in your office or region?

    a. What approaches do you think might help bring about these changes?

    b. What effect, if any, do you think these changes would have on the number and type of FOIA cases that you receive?

    c. Are you aware of other program offices or regions that have implemented these approaches?

        i. If yes, do you know the results of their efforts?

INTRA-AGENCY PROGRAM IMPROVEMENT EFFORTS *[QUESTIONS 8, 8A, 8B, 8C, AND 9]*

21. Some parts of the Agency have identified technology solutions to enhance FOIA processing (e.g., redaction software). To what extent, if any, would new or improved technologies improve FOIA processing in your office or region?

    a. (If applicable) What new or enhanced capabilities would these technologies provide?

    b. Do you have any thoughts about specific technology solutions that would provide these capabilities?

        i. If yes, what are they?

22. Some offices and regions have taken steps to partly or fully centralize their FOIA programs.

    a. What do you see as the benefits and costs of a centralized approach to FOIA administration for your office or region?

    b. Do you think that a centralized approach is appropriate for your office/region?

        i. Why or why not?

23. EPA recently established a FOIA Expert Assistance Team (FEAT) within the Office of General Counsel to provide assistance in the FOIA process.

    a. To date, has your office or region used the FEAT?

        i. If yes, what was your experience?

    b. Moving forward, do you anticipate your office or region using the FEAT?

        i. If yes, in what capacity?

        ii. If no, why not?

INTERVIEW GUIDE FOR THE ACTING DEPUTY DIVISION DIRECTOR, COLLECTION STRATEGIES DIVISION

BACKGROUND

1. When did you become the Acting Deputy Division Director for the Collection Strategies Division?
2. What is your role in the Agency's FOIA Program?
3. We understand that you were previously with OIC before moving to OIAA, and then moved back to OIC. Can you please describe the previous positions you have held?

STATUS OF EPA'S FOIA PROGRAM *[QUESTIONS 4, 4A, AND 4B]*

4. EPA's FOIA program as a whole is mostly decentralized; however, individual program offices and regions can have a centralized, decentralized, or hybrid FOIA program.[50]
    a. How, if at all, do you think the structure (centralized, decentralized, or hybrid) of the FOIA program affects FOIA process and outcomes?
5. What are your overall impressions of the effectiveness of EPA's FOIA program?
    a. What aspects of the program are working well?
    b. What improvements do you think are needed to strengthen the FOIA program and address public information needs?
        i. Do you have any specific thoughts or suggestions for how EPA might go about making those improvements?
6. What do you see as the barriers to greater efficiency in processing FOIA requests?
7. Our study considers the accountability and consistency of the Agency's FOIA program.
    a. What do you see as the most important factors for ensuring the accountability of employees to the FOIA program?[51]
    b. What do you see as the most important factors for ensuring the consistency of the FOIA process?[52]

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[50] A "centralized" FOIA model is one in which dedicated FOIA Specialists (who do not have collateral job responsibilities) perform all FOIA functions in their office/region, and report to a manager who is directly responsible for all FOIA responses within the office/region. In a "decentralized" model, a FOIA Coordinator or FOIA Officer processes incoming requests and assigns them to the appropriate regional or program contact, who in turn assigns requests to subject-matter experts (whose main job is typically not FOIA) who locate the relevant records. A "hybrid" FOIA program includes elements of a centralized and decentralized system - e.g., a dedicated FOIA manager, but no dedicated FOIA Specialists.

[51] We define accountability in terms of (1) how staff and mid-level managers respond to FOIA requests, and (2) the extent to which senior managers commit to meeting (and achieve) the Agency's FOIA goals.

[52] We define consistency (1) within and (2) across program offices/regions. (1) A program office/region is internally consistent if it follows the same or similar process for responding to the same or similar FOIA request. (2) Program offices

UPDATED FOIA PROCEDURES *[QUESTIONS 1, 2 AND 2A]*

8. On September 30, 2014, EPA's Chief Information Officer issued updated Agency-wide FOIA policy and procedures documents. Program offices and regions were required to develop or update their written FOIA procedures by March 31, 2015.
    a. To what extent (and how) might the updated Agency-wide FOIA policies and procedures strengthen the Agency's FOIA program? Do you have any questions or concerns about the updated Agency-wide procedures (if yes, explain)?
    b. Have you reviewed, or been briefed on, the organization-specific FOIA procedures that were due in March 2015?
        i. If yes, what are your impressions about the organization-specific procedures?
        ii. What are the main similarities and differences in the procedures across organizations?
9. Are you aware of any training that the National FOIA Office, and/or regional FOIA offices, have provided on the updated FOIA procedures? If yes, please describe.
10. Have you received any feedback from program offices or regions about the updated FOIA procedures? If yes, what was the nature of the feedback?

FOIA PROGRAM IMPROVEMENT EFFORTS *[QUESTIONS 5-9]*

11. What opportunities do you see to streamline FOIA processing in the National FOIA Office and/or within programs and regions?

    The interviewer will first ask the question in an open-ended format and record responses. Then, the interviewer will read the following list of prompts and record responses for each prompt.

    Prompts:

    a. Increased centralization of FOIA responsibilities with a smaller group of staff within regional offices

    b. Increased centralization of FOIA responsibilities within a core FOIA group at HQ

    c. Increased centralization – other (specify)

    d. Greater use of proactive disclosure

    e. Testing new technologies to manage the FOIA process

    f. Holding a FOIA Lean event

12. Where do you see the greatest potential for improving the accountability and consistency of the Agency's FOIA program?

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and regions are consistent across one another if they respond to the same or similar FOIA request in the same or similar manner.

a. What approaches do you think might help bring about these changes?

b. Are you aware of program offices or regions that have implemented these approaches?

i. If yes, do you know the results of their efforts?

13. Some parts of the Agency have identified technology solutions to enhance FOIA processing (e.g., redaction software). To what extent, if any, would new or improved technologies improve FOIA processing?

a. (If applicable) What new or enhanced capabilities would these technologies provide?

b. Do you have any thoughts about specific technology solutions that would provide these capabilities?

i. If yes, what are they?

14. Some offices and regions have taken steps to partly or fully centralize their FOIA programs.

a. What do you see as the benefits and costs of a centralized approach to FOIA administration within offices and regions?

b. In what circumstances, if any, is a centralized approach appropriate for an office or region?

15. EPA recently established a FOIA Expert Assistance Team (FEAT) within the Office of General Counsel to provide assistance in the FOIA process.

a. What are your thoughts about the FEAT's role in improving the FOIA program?

b. How do you see the National FOIA Office interacting with the FEAT?

c. How do you see program offices and regions interacting with the FEAT?

INTERVIEW GUIDE FOR SENIOR MANAGERS IN OFFICE OF GENERAL COUNSEL

BACKGROUND

1. When did you join EPA?
    a. How long have you been working in OGC?
    b. What positions have you held prior to your current position (both at EPA and previous employers)?
2. How many FOIA cases are you currently working on? Approximately how many of these are litigation cases?
3. What percentage of your time do you spend working on FOIA cases?

OGC'S ROLE IN EPA'S FOIA PROGRAM

4. Based on our preliminary research, we understand that OGC has three major roles in the FOIA program: (i) provide legal advice on FOIA matters; (ii) issue final decisions on FOIA appeals and confidentiality determinations; and (iii) serve as co-counsel with DOJ in FOIA litigation.
    a. Is this an accurate summary of OGC's role in the FOIA program? If no, please clarify.
    b. Approximately what proportion of the time that you spend on FOIA cases is directed toward each of the three activities listed above?
5. Under what circumstances do program offices and regions seek OGC's legal advice on FOIA matters? How often does this occur?
6. Are there any common features of FOIA cases that advance to litigation (if yes, what are they)?
    a. Can you estimate the proportion of FOIA litigation cases that involve non-response?
    b. Do you have any readily available information on litigation fees associated with cases involving non-response?
7. We understand that OGC co-chairs the Records Workgroup, which includes a FOIA Technology Sub-group. How familiar are you with the activities of the workgroup?

STATUS OF EPA'S FOIA PROGRAM *[QUESTIONS 4, 4A, AND 4B]*

8. EPA's FOIA program as a whole is mostly decentralized; however, individual program offices and regions can have a centralized, decentralized, or hybrid FOIA program.[53]

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[53] A "centralized" FOIA model is one in which dedicated FOIA Specialists (who do not have collateral job responsibilities) perform all FOIA functions in their office/region, and report to a manager who is directly responsible for all FOIA responses within the office/region. In a "decentralized" model, a FOIA Coordinator or FOIA Officer processes incoming requests and assigns them to the appropriate regional or program contact, who in turn assigns requests to subject-matter experts (whose

a. How, if at all, do you think the structure (centralized, decentralized, or hybrid) of the FOIA program affects FOIA process and outcomes?

9. What are your overall impressions of the effectiveness of EPA's FOIA program?
    a. What aspects of the program are working well?
    b. What improvements do you think are needed to strengthen the FOIA program and address public information needs?
        i. Do you have any specific thoughts or suggestions for how EPA might go about making those improvements?
10. What do you see as the barriers to greater efficiency in processing FOIA requests?
11. Our study considers the accountability and consistency of the Agency's FOIA program.
    a. What do you see as the most important factors for ensuring the accountability of employees to the FOIA program?[54]
    b. What do you see as the most important factors for ensuring the consistency of the FOIA process?[55]
    c. How, if at all, do these factors influence the number and type of FOIA cases that end up in litigation?

UPDATED FOIA PROCEDURES *[QUESTIONS 1, 2 AND 2A]*

12. On September 30, 2014, EPA's Chief Information Officer issued updated Agency-wide FOIA policy and procedures documents. Program offices and regions were required to develop or update their written FOIA procedures by March 31, 2015.
    a. To what extent (and how) might the updated Agency-wide FOIA policies and procedures strengthen the Agency's FOIA program?
    b. Do you have any questions or concerns about the updated Agency-wide procedures (if yes, explain)?
    c. Have you reviewed, or been briefed on, the organization-specific FOIA procedures that were due in March 2015? If yes:
        i. What are your impressions about the organization-specific procedures?

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main job is typically not FOIA) who locate the relevant records. A "hybrid" FOIA program includes elements of a centralized and decentralized system - e.g., a dedicated FOIA manager, but no dedicated FOIA Specialists.

[54] We define accountability in terms of (1) how staff and mid-level managers respond to FOIA requests, and (2) the extent to which senior managers commit to meeting (and achieve) the Agency's FOIA goals.

[55] We define consistency (1) within and (2) across program offices/regions. (1) A program office/region is internally consistent if it follows the same or similar process for responding to the same or similar FOIA request. (2) Program offices and regions are consistent across one another if they respond to the same or similar FOIA request in the same or similar manner.

ii. What are the main similarities and differences in the procedures across organizations? What factors explain these differences?

13. Are you aware of any training that the National FOIA Office, regional FOIA offices, and/or other parts of the Agency have provided regarding the updated FOIA procedures? If yes, please describe.

14. Have you heard any feedback from program offices or regions about the updated FOIA procedures? If yes, what was the nature of their feedback?

15. How, if at all, do you expect the updated FOIA procedures to affect the number and types of FOIA cases that OGC receives?

FOIA PROGRAM IMPROVEMENT EFFORTS *[QUESTIONS 5-9]*

16. What opportunities do you see to streamline FOIA processing in the National FOIA Office and/or within programs and regions?

    The interviewer will first ask the question in an open-ended format and record responses. Then, the interviewer will read the following list of prompts and record responses for each prompt.

    Prompts:

    a. *Increased centralization of FOIA responsibilities with a smaller group of staff within regional offices*

    b. *Increased centralization of FOIA responsibilities within a core FOIA group at HQ*

    c. *Increased centralization – other (specify)*

    d. *Greater use of proactive disclosure*

    e. *Testing new technologies to manage the FOIA process*

    f. *Holding a FOIA Lean event*

17. Where do you see the greatest potential for improving the accountability and consistency of the Agency's FOIA program?

    a. What approaches do you think might help bring about these changes?

    b. What effect, if any, do you think these changes would have on the number and type of FOIA cases that end up in litigation?

    c. Are you aware of program offices or regions that have implemented these approaches?

        i. If yes, do you know the results of their efforts?

18. Some parts of the Agency have identified technology solutions to enhance FOIA processing (e.g., redaction software). To what extent, if any, would new or improved technologies improve FOIA processing?

    a. (If applicable) What new or enhanced capabilities would these technologies provide?

b. Do you have any thoughts about specific technology solutions that would provide these capabilities?

   i. If yes, what are they?

c. What effect, if any, do you think these changes would have on the number and type of FOIA cases that end up in litigation?

19. Some offices and regions have taken steps to partly or fully centralize their FOIA programs.

    a. What do you see as the benefits and costs of a centralized approach to FOIA administration within offices and regions?

    b. In what circumstances, if any, is a centralized approach appropriate for an office or region?

    c. What effect, if any, do you think increased centralization of the FOIA program would have on the number and type of FOIA cases that end up in litigation?

20. EPA recently established a FOIA Expert Assistance Team (FEAT) within OGC to provide assistance in the FOIA process.

    a. What are your thoughts about the FEAT's role in improving the FOIA program?

    b. Do you think that the FEAT will reduce the Agency's FOIA-related litigation risk? Why or why not?

    c. How do you see the National FOIA Office interacting with the FEAT?

    d. How do you see program offices and regions interacting with the FEAT?

INTERVIEW GUIDE FOR LEAN COORDINATORS (REGION 3, REGION 7, AND OAR)

Note: We have received more background documents for some regions/offices than for others. We will tailor our interview questions based on the documents that we have received prior to conducting the interviews.

BACKGROUND

1. What is your current position at EPA?
    a. How long have you been in your current position?
    b. What previous positions have you held with EPA?
2. What was your role in preparing for the FOIA Lean Event?
3. What was/is your role in implementing the Lean Event's recommendations and/or tracking the implementation status?

LEAN EVENT GOALS, SCOPE, AND RECOMMENDATIONS *[QUESTIONS 4A AND 4B]*

4. Are you aware of any FOIA improvement efforts that your office or region contemplated or implemented prior to initiating the Lean Event?
    a. If yes, please describe. When did it occur? What topics/processes were addressed? What were the results?
5. Why did your office or region initiate the FOIA Lean Event?
6. Please describe the purpose, goals, and scope of the Lean Event.
7. Who participated in the Lean Event?
8. What major barriers or "pain points" did the Lean Event uncover?
9. What recommendations came out of the Lean Event?
10. What were the most significant differences between the "as-is" process and the "to-be" process? *(Probe: Reduction in number of steps; enhanced coordination; use of new/improved technologies; centralization; other)*
    a. (If applicable) Do you have materials on the "as-is" process, the "to-be" process, the Lean Event report-out, and/or other relevant documents that you can share with us?

LEAN FOLLOW-UP *[QUESTIONS 5, 6, AND 7]*

11. What recommendations from the FOIA Lean Event have you implemented to date?
    a. When did you implement the changes?
    b. What results, if any, have you observed following the changes?
12. What additional recommendations, if any, are you still planning to implement?
    a. What are the current status and expected timing of these changes?

13. Are there any recommendations that got "stuck," or that you have decided not to implement at the present time?
    a. If yes, please explain.
14. Can you estimate the benefits and costs (quantitative or qualitative) associated with:
    a. Recommendations that you have already implemented?
    b. Recommendations that you are in the process of implementing?
    c. Recommendations that stalled or that you have decided not to implement?
15. Aside from the Lean Event, have any other changes occurred that have affected the FOIA program in your office or region (if yes, describe)?
    a. (If applicable) How have these changes affected FOIA performance in your office or region?
16. Would you recommend that other EPA offices or regions implement a FOIA Lean Event?
    a. Why or why not?

UPDATED FOIA PROCEDURES *[QUESTIONS 1, 2 AND 2A]*

17. On September 30, 2014, EPA's Chief Information Officer issued updated Agency-wide FOIA policy and procedures documents. Program offices and regions were required to develop or update their written FOIA procedures by March 31, 2015.
    a. How, if at all, have your office's or region's FOIA procedures changed following the updated Agency-wide FOIA procedures?

       The interviewer will first ask the question in an open-ended format and record responses. Then, the interviewer will read the following list of prompts and record responses for each prompt.

       Prompts:

       i. *Use of FOIAonline to manage all FOIA requests.*
       ii. *Use of a management and tracking system to process all FOIA requests.*
       iii. *Review of documents before releasing them to the requester.*
       iv. *Consistent release of records unless one of the mandatory exemptions applies or if a determination of foreseeable harm is made.*
       v. *Provision of annual FOIA training.*
       vi. *FOIA responsibilities included in personnel performance agreements.*
       vii. *Other (specify).*
    b. How, if at all, do the procedural changes reflect or modify the "to-be" process that you developed in the Lean Event?

c. What is the schedule for implementing each major change? If you have already implemented a major change following the new procedures, please describe the change and when it was implemented.

CONTINUOUS IMPROVEMENT IN YOUR OFFICE OR REGION *[QUESTIONS 5, 6, AND 7]*

18. What opportunities do you see to further streamline FOIA processing in your office or region?

    The interviewer will first ask the question in an open-ended format and record responses. Then, the interviewer will read the following list of prompts and record responses for each prompt.

    Prompts:

    a. *Increased centralization of FOIA responsibilities with a smaller group of staff in my office*

    b. *Increased centralization of FOIA responsibilities within a core FOIA group at HQ*

    c. *Increased centralization of FOIA responsibilities within the program office or region*

    d. *Increased centralization – other (specify)*

    e. *Greater use of proactive disclosure*

    f. *Testing new technologies to manage the FOIA process*

    g. *Holding another FOIA Lean event*

19. Where do you see the greatest potential for improving the accountability[56] and consistency[57] of the FOIA program in your office or region?

    a. What approaches do you think might help bring about these changes?

    b. Are you aware of other program offices or regions that have implemented these approaches?

        i. If yes, do you know the results of their efforts?

INTRA-AGENCY PROGRAM IMPROVEMENT EFFORTS *[QUESTIONS 8, 8A, 8B, 8C, AND 9]*

20. Some parts of the Agency have identified technology solutions to enhance FOIA processing (e.g., redaction software). To what extent, if any, would new or improved

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[56] We define accountability in terms of (1) how staff and mid-level managers respond to FOIA requests, and (2) the extent to which senior managers commit to meeting (and achieve) the Agency's FOIA goals.

[57] We define consistency (1) within and (2) across program offices/regions. (1) A program office/region is internally consistent if it follows the same or similar process for responding to the same or similar FOIA request. (2) Program offices and regions are consistent across one another if they respond to the same or similar FOIA request in the same or similar manner.

technologies improve FOIA processing in your office or region? **(Ask this question only if not already covered in the discussion above.)**

a. (If applicable) What new or enhanced capabilities would these technologies provide?

b. Do you have any thoughts about specific technology solutions that would provide these capabilities?

i. If yes, what are they?

21. Some offices and regions have taken steps to partly or fully centralize their FOIA programs.[58] **(Ask this question only if not already covered in the discussion above.)**

a. What do you see as the benefits and costs of a centralized approach to FOIA administration for your office or region?

b. Do you think that a centralized approach is appropriate for your office/region?

i. Why or why not?

22. EPA recently established a FOIA Expert Assistance Team (FEAT) within the Office of General Counsel to provide assistance in the FOIA process.

a. To date, has your office or region used the FEAT?

i. If yes, what was your experience?

b. Moving forward, do you anticipate your office or region using the FEAT?

i. If yes, in what capacity?

ii. If no, why not?

[58] A "centralized" FOIA model is one in which dedicated FOIA Specialists (who do not have collateral job responsibilities) perform all FOIA functions in their office/region, and report to a manager who is directly responsible for all FOIA responses within the office/region. In a "decentralized" model, a FOIA Coordinator or FOIA Officer processes incoming requests and assigns them to the appropriate regional or program contact, who in turn assigns requests to subject-matter experts (whose main job is typically not FOIA) who locate the relevant records. A "hybrid" FOIA program includes elements of a centralized and decentralized system - e.g., a dedicated FOIA manager, but no dedicated FOIA Specialists.

INTERVIEW GUIDE FOR THE ACTING DIRECTOR OF THE FEAT

CURRENT STATUS OF THE FEAT

1. When we interviewed you in early February 2015, the FEAT had "beta tested" its process with selected FOIA cases. Next steps included: continue beta testing; staff the team; and solicit feedback on operations.
    a. How many staff currently belong to the FEAT? When were they hired? What are their backgrounds?
    b. Have there been any changes to the FEAT's processes and operations since February 2015? If yes, what changed, and why?
    c. What feedback have you received from other parts of the Agency about the FEAT's operations?

FEAT PROCESSES AND OUTCOMES *[CONTEXT, AND QUESTIONS 4, 6, AND 7]*

2. Please tell us more about the current operations of the FEAT.
    a. How many cases is the FEAT currently working on? Has the number of cases increased or decreased since February 2015?
    b. Are you reviewing all incoming FOIA requests, or only certain types of requests?
    c. How are you identifying the cases that could most benefit from the FEAT's assistance?
    d. Can you estimate the proportion of cases that originate with requests from offices/regions vs. cases that you initiate based on your initial screening?
    e. Have you noticed that some offices or regions use the FEAT's services more frequently than other offices and regions?
        i. If yes, who are the most frequent users of the FEAT's services?
        ii. What factors contribute to differences in how frequently different offices and regions use the FEAT?
    f. Have you noticed any common features of the cases that the FEAT works on? (e.g., case size, complexity, topic, etc.) If yes, please describe.
    g. With whom do you coordinate on a typical case?
        i. What role do regions and program offices play?
        ii. What role does the National FOIA Office play?
    h. How many hours do you and your staff spend on each case? Please estimate the minimum, maximum, and average number of hours that you spend.
        i. What technologies do you use to process FOIA requests? (e.g., Relativity, Adobe 11, etc.) Do you have any comments about the technologies that you use?

3. Based on your experience – and any feedback you may have received about the FEAT – how, if at all, do you think the FEAT affects the Agency's:
    a. Consistency[59] in responding to FOIA requests?
    b. Efficiency/timeliness of FOIA responses?
    c. Volume, and type, of information released in response to FOIA requests? (e.g., determinations of relevance, foreseeable harm, exemption status, etc.)
    d. Other effects (please specify)?

OTHER FOIA IMPROVEMENT EFFORTS AND THE FEAT *[QUESTIONS 8, 8A, 8B, 8C, AND 9]*

4. Different parts of the Agency have adopted, or are considering, various improvements to the FOIA program, such as: new/improved technology for managing FOIA requests (e.g., redaction software); increased centralization of FOIA; and "leaning" various aspects of the FOIA process.
    a. To what extent, if any, would new or improved technologies improve FOIA processing?
        i. What new or enhanced capabilities would these technologies provide?
        ii. Do you have any thoughts about specific technology solutions that would provide these capabilities (if yes, what are they)?
    b. When we spoke in February 2015, you indicated that increased centralization of the FOIA program could be beneficial to the Agency. What do you see as the benefits and costs of a centralized approach to FOIA administration within offices and regions? In what circumstances is a centralized approach most beneficial?
    c. What opportunities do you see to streamline FOIA processing in the National FOIA Office and/or within programs and regions?
    d. How, if at all, do these efforts interact with the FEAT's work?
5. How can the rest of EPA most effectively leverage the FEAT's services within the context of these ongoing improvement efforts?

UPDATED FOIA PROCEDURES *[QUESTIONS 1, 2 AND 2A]*

6. On September 30, 2014, EPA's Chief Information Officer issued updated Agency-wide FOIA policy and procedures documents. Program offices and regions were required to develop or update their written FOIA procedures by March 31, 2015.

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[59] We define consistency (1) within and (2) across program offices/regions. (1) A program office/region is internally consistent if it follows the same or similar process for responding to the same or similar FOIA request. (2) Program offices and regions are consistent across one another if they respond to the same or similar FOIA request in the same or similar manner.

a. To what extent (and how) might the updated Agency-wide FOIA policies and procedures strengthen the Agency's FOIA program? Do you have any questions or concerns about the updated Agency-wide procedures (if yes, explain)?

b. Have you reviewed, or been briefed on, the organization-specific FOIA procedures that were due in March 2015?

    i. If yes, what are your impressions about the organization-specific procedures?

    ii. What are the main similarities and differences in the procedures across organizations?

INTERVIEW GUIDE FOR FEAT STAFF

BACKGROUND

1. When did you join the FEAT?
2. What positions did you hold prior to joining the FEAT? ***[Note: We understand from Becky Dolph that Denise Walker held a similar job at NOAA before joining EPA.]***
3. What do you see as the main purpose and functions of the FEAT?
4. What are your roles and responsibilities with the FEAT?

FEAT PROCESSES AND OUTCOMES *[CONTEXT, AND QUESTIONS 4, 6, AND 7]*

5. Please tell us more about your experience as a member of the FEAT.
    a. How many cases are you currently working on? Has the number of cases increased or decreased since you joined the FEAT?
    b. Do you review all incoming FOIA requests, or only certain types of requests?
    c. How do you identify cases that could benefit from the FEAT's assistance?
    d. Can you estimate the proportion of cases that originate with requests from offices/regions vs. cases that you initiate based on your initial screening?
    e. Have you noticed that some offices or regions use the FEAT's services more frequently than other offices and regions?
        i. If yes, who are the most frequent users of the FEAT's services?
        ii. What factors contribute to differences in how frequently different offices and regions use the FEAT?
    f. Have you noticed any common features of the cases that the FEAT works on? (e.g., case size, complexity, topic, etc.) If yes, please describe.
    g. With whom do you coordinate on a typical case?
        i. What role do regions and program offices play?
        ii. What role does the National FOIA Office play?
    h. How many hours do you spend on each case? Please estimate the minimum, maximum, and average number of hours that you spend.
    i. What technologies do you use to process FOIA requests? (e.g., Relativity, Adobe 11, etc.) Do you have any comments about the technologies that you use?
6. Based on your experience – and any feedback you may have received about the FEAT – how, if at all, do you think the FEAT affects the Agency's:

a. Consistency[60] in responding to FOIA requests?

b. Efficiency/timeliness of FOIA responses?

c. Volume, and type, of information released in response to FOIA requests? (e.g., determinations of relevance, foreseeable harm, exemption status, etc.)

d. Other effects (please specify)?

OTHER FOIA IMPROVEMENT EFFORTS AND THE FEAT *[QUESTIONS 8, 8A, 8B, 8C, AND 9]*

7. Different parts of the Agency have adopted, or are considering, various improvements to the FOIA program, such as: new/improved technology for managing FOIA requests (e.g., redaction software); increased centralization of FOIA; and "leaning" various aspects of the FOIA process.

    a. To what extent, if any, would new or improved technologies improve FOIA processing?

        i. What new or enhanced capabilities would these technologies provide?

        ii. Do you have any thoughts about specific technology solutions that would provide these capabilities (if yes, what are they)?

    b. What do you see as the benefits and costs of a centralized approach to FOIA administration within offices and regions? In what circumstances, if any, is a centralized approach appropriate?

    c. What opportunities do you see to streamline FOIA processing in the National FOIA Office and/or within programs and regions?

    d. How, if at all, do these efforts interact with the FEAT's work?

8. How can the rest of EPA most effectively leverage the FEAT's services within the context of these ongoing improvement efforts?

ADDITIONAL QUESTIONS FOR DENISE WALKER (FORMERLY AT NOAA) *[QUESTIONS 3, 5, 6]*

9. We understand that you used to work for NOAA's FOIA program.

    a. Overall, how similar or different are the FOIA programs at EPA and NOAA?

    b. What are the major similarities and differences? (e.g., organizational structure, process, types of requests)

    c. Does NOAA have anything similar to the FEAT? If yes, please explain.

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[60] We define consistency (1) within and (2) across program offices/regions. (1) A program office/region is internally consistent if it follows the same or similar process for responding to the same or similar FOIA request. (2) Program offices and regions are consistent across one another if they respond to the same or similar FOIA request in the same or similar manner.

d. What other improvements, if any, has NOAA implemented to strengthen its FOIA program? (e.g., best practices, new technologies, process improvements, etc.)

e. Which of these improvements, if any, are applicable to EPA?

INTERVIEW GUIDE FOR OSHA FOIA MANAGER

BACKGROUND

1. Please briefly summarize your past and current FOIA responsibilities at OSHA.
    a. How long have you been in your current position?
    b. What previous positions have you held with OSHA or other federal agencies?

OVERVIEW OF OSHA'S FOIA PROGRAM [QUESTION 3, AND CONTEXT FOR THE CASE STUDY]

2. Please describe the structure of OSHA's FOIA program.
    a. Does OSHA have a centralized (top-down, standardized) or decentralized (highly delegated to regional offices) FOIA program?
        i. Is there a National FOIA Office? Regional FOIA offices?
        ii. *(If applicable)* What are the roles and authorities of the National Office vis-à-vis regional offices?
    b. How, if at all, do you think the structure of the FOIA program affects the FOIA process and outcomes?
3. How familiar are you with EPA's FOIA program?
    a. *(If familiar)* How similar or different is EPA's FOIA program from OSHA's FOIA program? What are the major similarities and differences?
4. Please describe the nature of the FOIA requests that OSHA receives.
    a. What topics are typically covered in the requests?
    b. How do you identify potentially responsive records? Are all records for a request typically located in one place or in multiple places?
    c. How voluminous is a typical response?
    d. Do your answers to the previous questions differ for *simple* vs. *complex* requests?
        i. What are the typical characteristics of a simple request?
        ii. What are the typical characteristics of a complex request?
5. What are the main steps involved in processing a FOIA request?
    a. Who processes incoming requests? How many points of entry exist for incoming requests?
    b. Who locates potentially responsive records (if different from previous)?
    c. Who reviews responses before they are sent to the requester (if different from previous)?
    d. Who communicates with the requester (if different from previous)?

e. To what extent is intra-Agency coordination required when processing a FOIA request (e.g., across regions)? How often does this occur?

f. Is the process different for *simple* requests vs. *complex* requests? If yes, please explain the differences.

6. What technologies do you currently use to process FOIA requests?

7. Approximately how many hours do staff spend on processing FOIA requests?

   a. Minimum number of hours

   b. Maximum number of hours

   c. Average number of hours

8. What do you see as the most important factors for ensuring a well-functioning FOIA program?

   a. What do you see as the most important factors for ensuring the accountability of employees to the FOIA program?[61]

   b. What do you see as the most important factors for ensuring the consistency of the FOIA process?[62]

BEST PRACTICES AND PROGRAM IMPROVEMENT [QUESTIONS 5 AND 6]

9. OSHA has a consistently low number of backlogged requests relative to other agencies.

   a. To what do you attribute your consistently low backlog? How do you manage your backlog?

10. We understand that OSHA digitized its records.

    a. When did this occur?

    b. What effect, if any, have digitized records had on the steps or time required to process a FOIA request?

    c. Can you estimate the approximate cost (in dollars and/or FTEs)?

11. What other actions, if any, has OSHA considered to strengthen its FOIA program?

    a. Which of these improvements were implemented, and when?

    b. What was the result of these improvements on processing speed and consistency?

12. What practices has OSHA adopted to ensure accountability and consistency in your FOIA program?

13. Are you aware of other best practices that other federal agencies have adopted?

---

[61] We define accountability in terms of (1) how staff and mid-level managers respond to FOIA requests, and (2) the extent to which senior managers commit to meeting (and achieve) an agency's FOIA goals.

[62] We define consistency as responding to the same or similar FOIA request in the same or similar manner.

a. If yes, please describe.

b. If yes, would these practices be relevant for OSHA? Why or why not?

INTERVIEW GUIDE FOR CHIEF FOIA COMPLIANCE STAFF, OFFICE OF INFORMATION POLICY, DEPARTMENT OF JUSTICE

BACKGROUND

1. Please briefly summarize your past and current FOIA responsibilities.
    a. What role, if any, do you play in reviewing the Annual FOIA Reports from other federal agencies?
    b. What role, if any, do you play in developing FOIA guidance and training?
2. Across federal agencies, in general, what improvements have you noticed in FOIA programs over the past five years?
3. In general, what aspects of agencies' FOIA programs still need to be improved?

EPA'S FOIA PERFORMANCE (QUESTION 3)

4. What are your overall impressions of EPA's FOIA performance?
    a. What do you see as the program's strengths?
    b. What do you see as the program's weaknesses?
    c. In September 2014, EPA's Chief FOIA Officer issued updated FOIA procedures, which required the development of organization-specific FOIA procedures in each program and regional office.
        i. How familiar are you with EPA's updated FOIA procedures?
        ii. *(If familiar)* Do you think that the updated FOIA procedures address the weaknesses that you identified in the previous question? Why or why not?
    d. How does EPA's FOIA performance compare to the performance of other federal agencies?
        i. We are preparing a FOIA case study on OSHA due to its similar volume of FOIA requests, regulatory nature, and regional structure. How would you compare the FOIA performance and practices of OSHA and EPA?
    e. Are there particular agencies that stand out as leaders in FOIA implementation?
        i. Is EPA among them?
    f. What factors explain the differences in performance between EPA and other federal agencies? (e.g., degree of comparability across agencies; different practices across agencies; etc.)

BEST PRACTICES AND PROGRAM IMPROVEMENT (QUESTIONS 5 AND 6)

5. What best practices have federal agencies (EPA or other) adopted to strengthen their FOIA programs?
    a. To what extent are best practices adopted by other federal agencies transferrable to EPA?
6. What other suggestions or advice would you offer EPA to strengthen its FOIA program?
    a. Are you aware of any federal agencies that have successfully implemented these approaches (if yes, please describe)?

APPENDIX E: SURVEY INSTRUMENT

Introduction:

Thank you for participating in this brief online survey. Your responses will provide valuable input for EPA's ongoing evaluation of the Agency's FOIA program.

Senior managers in the Office of Environmental Information (OEI) initiated this evaluation to examine EPA's current implementation of FOIA and identify opportunities to improve the program. This survey is a critical part of the evaluation. The survey is intended to show what aspects of the program are working well and what can be improved. The survey results will help inform strategic planning decisions for FY16.

There are no "right" or "wrong" answers to the survey questions and your candor will ensure that the results are accurate and helpful. You should answer the questions based on your best knowledge and experience; it is not necessary to do any research to answer the questions.

EPA has hired an independent contractor to manage the survey. Please be assured that your responses will be kept STRICTLY CONFIDENTIAL. Survey results will be presented and reported only in the aggregate; findings will not be attributed to individuals nor will the names of respondents be shared.

The survey should take approximately 10 minutes to complete. The survey must be completed in one sitting, so please be sure you have sufficient time to complete the survey before you begin.

To begin the survey, click "Next."

[Next button – will direct respondents to the screening question.]

Screening question:

On average, what proportion of your time at work involves working on FOIA? (Select one.) (Screening and Evaluation Q4)

- More than 50%
- Between 25-50%
- Between 10-25%
- Between 1-10%
- None

[If respondent selects a-d, proceed to next question. If respondent selects answer choice e, go to the screen-out page.]

Screen-out page:

Based on your response to the previous question, you are not eligible to take the survey. Thank you for your time and willingness to participate.

NOTE: Gray shading indicates questions that may be skipped based on the respondent's answer to the previous question.

Survey questions:

1. **Do you have an official title or position in the FOIA program? (Select all that apply.) (general)**
   a) Yes, I am a FOIA Officer.
   b) Yes, I am a Headquarters FOIA Coordinator.
   c) Yes, I am a Regional FOIA Coordinator
   d) Yes, I am a Subject Matter Expert.
   e) Yes, I am a FOIA Professional.
   f) Yes, I am a FOIA Manager.
   g) Yes, I am a FOIA Specialist.
   h) Yes, other (specify)
   i) No

[Proceed to next question.]

2. **Have you ever participated in FOIA training at EPA? (Select one.) (general)**
   a) Yes, within the last year.
   b) Yes, between 1-3 years ago.
   c) Yes, more than three years ago.
   d) No.

[Proceed to next question.]

3. **What office or region do you work in? (Select one.) (general)**
   a) Office of Administration and Resources Management
   b) Office of Air and Radiation
   c) Office of Chemical Safety and Pollution Prevention
   d) Office of the Chief Financial Officer
   e) Office of Enforcement and Compliance Assurance
   f) Office of Environmental Information
   g) Office of General Counsel
   h) Office of Inspector General
   i) Office of International and Tribal Affairs
   j) Office of Research and Development
   k) Office of Solid Waste and Emergency Response
   l) Office of Water
   m) Region 1
   n) Region 2
   o) Region 3
   p) Region 4
   q) Region 5
   r) Region 6
   s) Region 7
   t) Region 8

u) Region 9
v) Region 10

[Proceed to next question.]

4. Are you familiar with changes in the Agency's FOIA procedures that the Chief Information Officer issued on September 30, 2014, and that were incorporated into office-specific and region-specific FOIA procedures by March 30, 2015? (Select one.) (Evaluation Q1)

a) Yes, I am very familiar with changes to FOIA procedures.
b) Yes, I am somewhat familiar with changes to FOIA procedures.
c) I have heard of changes to FOIA procedures but I don't know much about them.
d) I am not aware of changes to FOIA procedures.

[If respondent selects a – c, proceed to next question. If respondent selects answer choice d, skip question 5 and proceed to question 6.]

5. How were changes to FOIA procedures communicated to you? (Select all that apply.) (Evaluation Q1)

a) ☐ I received a copy of new procedures.
b) ☐ I received a written summary of new procedures.
c) ☐ I received a presentation of new procedures.
d) ☐ I participated in in-person training.
e) ☐ I participated in online training.
f) ☐ Other (specify)

[Proceed to next question.]

6. Indicate if the following were true or false a year ago. (Evaluation Q1)

a) True ☐ False ☐ I used FOIAonline to manage all FOIA requests.
b) True ☐ False ☐ I used a management and tracking system to process all FOIA requests.
c) True ☐ False ☐ At least one other EPA staff person reviewed documents before I released them to the requester.
d) True ☐ False ☐ I always released records requested unless one of the mandatory exemptions applied or if I made a determination of foreseeable harm.
e) True ☐ False ☐ I received FOIA training annually.
f) True ☐ False ☐ My FOIA responsibilities were included in my personnel performance agreement.

[Proceed to next question.]

7. Indicate if the following are true or false at the present time. (Evaluation Q1 and Q5)

a) True ☐ False ☐ I use FOIAonline to manage all FOIA requests.

b) True ☐ False ☐ I use a management and tracking system to process all FOIA requests.
c) True ☐ False ☐ At least one other EPA staff person reviews documents before I release them to the requester.
d) True ☐ False ☐ I always release records requested unless one of the mandatory exemptions applies or if I make a determination of foreseeable harm.
e) True ☐ False ☐ I receive FOIA training annually.
f) True ☐ False ☐ My FOIA responsibilities are included in my personnel performance agreement.

[Proceed to next question.]

8. What are your FOIA responsibilities? (Select all that apply.) (Evaluation Q4)

a) ☐ Receive and review incoming FOIA requests.
b) ☐ Assign requests to other staff.
c) ☐ Conduct research to respond to requests.
d) ☐ Search for responsive records.
e) ☐ Review potentially responsive records for relevance.
f) ☐ Redact records to be released.
g) ☐ Review responses prepared by others.
h) ☐ Communicate with requesters.
i) ☐ Close out requests.

[Proceed to next question.]

9. How much do your FOIA responsibilities vary in terms of time commitment from week to week? (Select one.) (Evaluation Q4)

a) Quite variable: Some weeks I work on FOIA a lot and some weeks not at all.
b) Somewhat variable: Some weeks I have more FOIA work than other weeks.
c) Consistent: My FOIA workload is rather consistent from week to week.
d) I only respond to the occasional FOIA request.

[If respondent selects a – c, proceed to next question. If respondent selects answer choice d, skip question 10 and proceed to question 11.]

10. Please estimate the average, minimum, and maximum number of hours that you spend to process a FOIA request. (Numeric fields) (Evaluation Q4)

Average (hours): _____

Minimum (hours): ____

Maximum (hours): ____

[Proceed to next question.]

11. Please indicate how important or unimportant the following FOIA-related goals are relative to your other job responsibilities. (Evaluation Q4a)

	Extremely Important	*Important*	*Moderately Important*	*Somewhat Important*	*Not Very Important*
Helping to reduce the FOIA backlog/maintaining a low backlog	☐	☐	☐	☐	☐
Following current FOIA procedures.	☐	☐	☐	☐	☐
Providing high-quality responses to FOIA requests.	☐	☐	☐	☐	☐

[Proceed to next question.]

12. How often do you coordinate with others to process FOIA requests? (Select one.) (Evaluation Q4b)

a) I coordinate with others on all FOIA requests.
b) I coordinate with others on most FOIA requests.
c) I coordinate with others on some FOIA requests.
d) I coordinate with others on few FOIA requests.
e) I never coordinate with others on FOIA requests.

[If respondent selects a – d, proceed to next question. If respondent selects e, skip questions 13-15, and proceed to question 16.]

13. On average, how much of the time spent on FOIA requests involves coordinating with others? (Select one.) (Evaluation Q4b)

a) A lot of time is spent on coordination
b) Some time is spent on coordination
c) Minimal time is spent on coordination

[Proceed to next question.]

14. With whom do you coordinate to process FOIA requests? (Select all that apply.) (Evaluation Q4b)

a) ☐ Subject matter specialists in my office
b) ☐ Subject matter specialists in other offices
c) ☐ FOIA officers/coordinators in my office
d) ☐ FOIA officers/coordinators in other offices
e) ☐ National FOIA Office
f) ☐ Regional FOIA Office
g) ☐ Others in my office (specify)

h) ☐ Others in other offices (specify)

[ ]

[Proceed to next question.]

15. What parts of the FOIA process do you coordinate with others on? (Select all that apply.) (Evaluation Q4b)

a) ☐ Receive and review incoming FOIA requests.
b) ☐ Assign requests to other staff.
c) ☐ Conduct research to respond to requests.
d) ☐ Search for responsive records.
e) ☐ Review potentially responsive records for relevance.
f) ☐ Redact records to be released.
g) ☐ Review responses prepared by others.
h) ☐ Communicate with requesters.
i) ☐ Close out requests.

[Proceed to next question.]

16. On average, how efficient or inefficient is your office at processing FOIA requests? (Select one.) (Evaluation Q7)

a) Very efficient
b) Somewhat efficient
c) Somewhat inefficient
d) Very inefficient

[Proceed to next question.]

17. What do you see as barriers to greater efficiency in processing FOIA requests in your office? (Select all that apply.) (Evaluation Q7)

a) ☐ Inconsistent following of FOIA procedures
b) ☐ Confusion about FOIA procedures
c) ☐ Confusion about FOIA policy
d) ☐ Not enough staff time dedicated to FOIA processing
e) ☐ Fragmented FOIA processing (too many different people or offices working on the same requests)
f) ☐ Trouble finding relevant records and e-mails
g) ☐ Inefficiencies in documenting responses
h) ☐ Inefficiencies in communicating with others about workflow
i) ☐ Inefficiencies in redaction process
j) ☐ Other (specify)

[ ]

[Proceed to next question.]

18. Would you support testing any of the following approaches to streamlining FOIA processing in your office? (Check all that apply.) (Evaluation Q7)

a) ☐ Increased centralization of FOIA responsibilities with a smaller group of staff in my office
b) ☐ Increased centralization of FOIA responsibilities within a core FOIA group at HQ
c) ☐ Greater use of proactive disclosure: releasing records on the EPA website that may be of interest to the public
d) ☐ Testing new technologies to manage the FOIA process
e) ☐ Holding a FOIA Lean event
f) ☐ Other (specify)

[Proceed to next question.]

19. Do you have adequate access to the technology you need to process FOIA requests? (Select Yes or No.) (Evaluation Q8b)

a) Workflow management and communications? Yes ☐ No ☐
b) Searching for similar FOIA requests? Yes ☐ No ☐
c) Redaction? Yes ☐ No ☐

[If respondent selects "Yes" to any selections in question 19, proceed to question 20. If respondent selects "No" to all selections, proceed to question 21.]

20. Please estimate the number of hours you save in processing the average FOIA request by using technological resources that meet your needs." (Enter number/select one.) (Evaluation Q8c)

a) Number of hours saved: ____ [numeric field]
b) None.
c) Not applicable: I have always had access to technological resources that meet my needs.
d) Don't know.

[Proceed to next question.]

21. Do you know about the OEI console for identifying records and e-mails? (Select Yes or No.) (Evaluation Q8b)

a) Yes ☐
b) No ☐

[If respondent selects "Yes" to question 21, proceed to question 22. If respondent selects "No," proceed to question 23.]

22. When processing FOIA requests, how often do you request or conduct searches through the OEI console? (Select one.) (Evaluation Q8b)

a) Always

b) Sometimes
c) Rarely
d) Never

[Proceed to next question.]

23. If you could have anything to make your work on FOIA easier, what would it be? (Comment box.) (Evaluation Question 8b)

[Proceed to end-of-survey page.]

End-of-survey page:

The independent contractor who is managing the survey would like to follow up with a small number of respondents to collect additional information about your responses. As a reminder, any information that you provide will be kept strictly confidential and will only be reported in aggregate. We will not attribute survey responses or results to individuals.

Please indicate below if you would be willing to participate in a 10-minute follow-up call to discuss your survey responses.

Yes ☐ **No** ☐

[If Yes, proceed to contact page. If No, go to thank-you page.]

Contact page:

Thank you for agreeing to participate in a 10-minute follow-up call to discuss your survey responses. Please enter your contact information below. This information will be kept strictly confidential and will be used only to follow up with you about your survey responses.

Name:	
Phone:	
E-mail:	

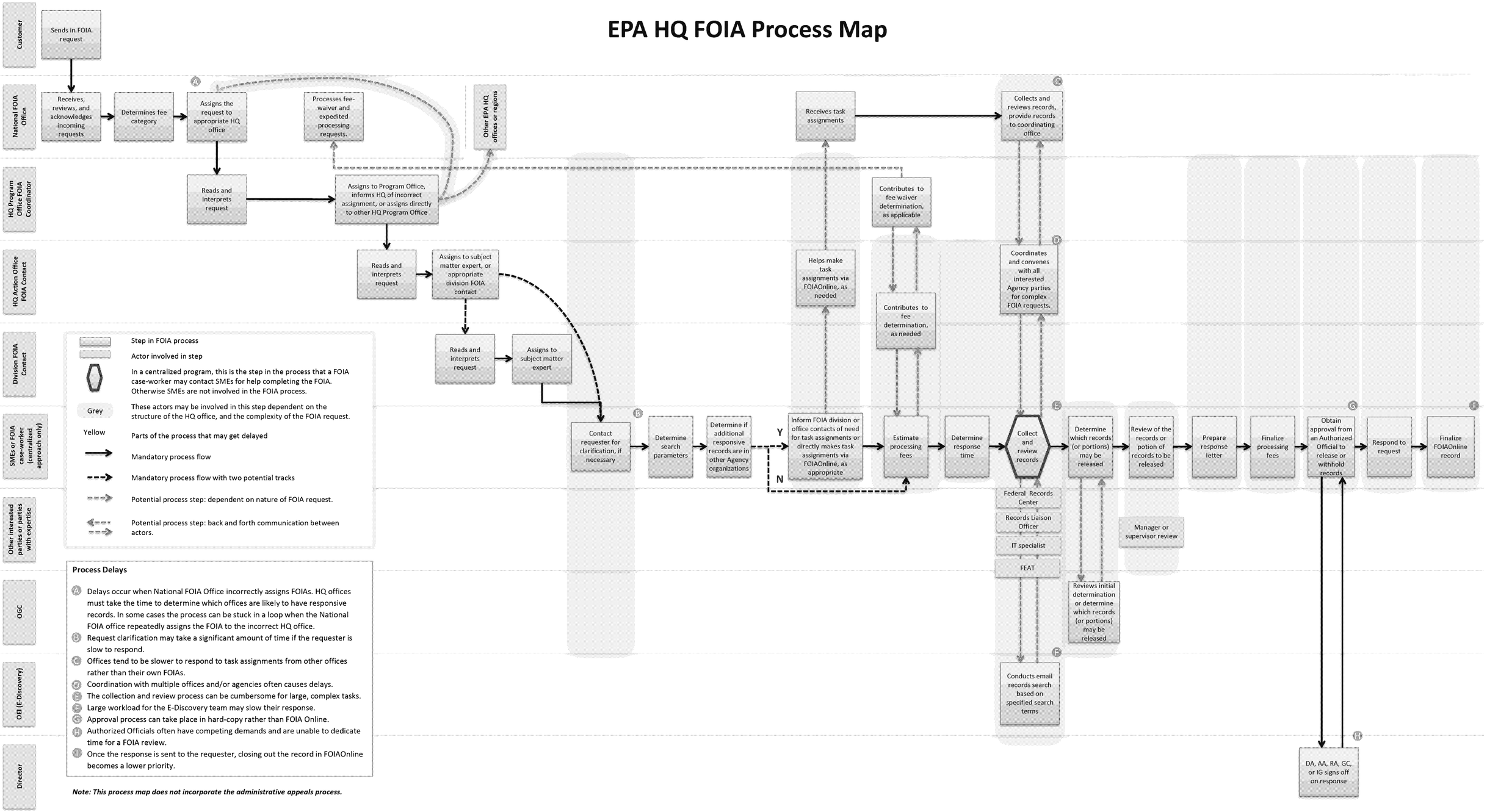
[Next button – will direct respondents to the thank-you page.]

Thank-you page:

Thank you for taking the survey. Have a great day.

APPENDIX F: PROCESS MAPS

EPA HQ FOIA Process Map

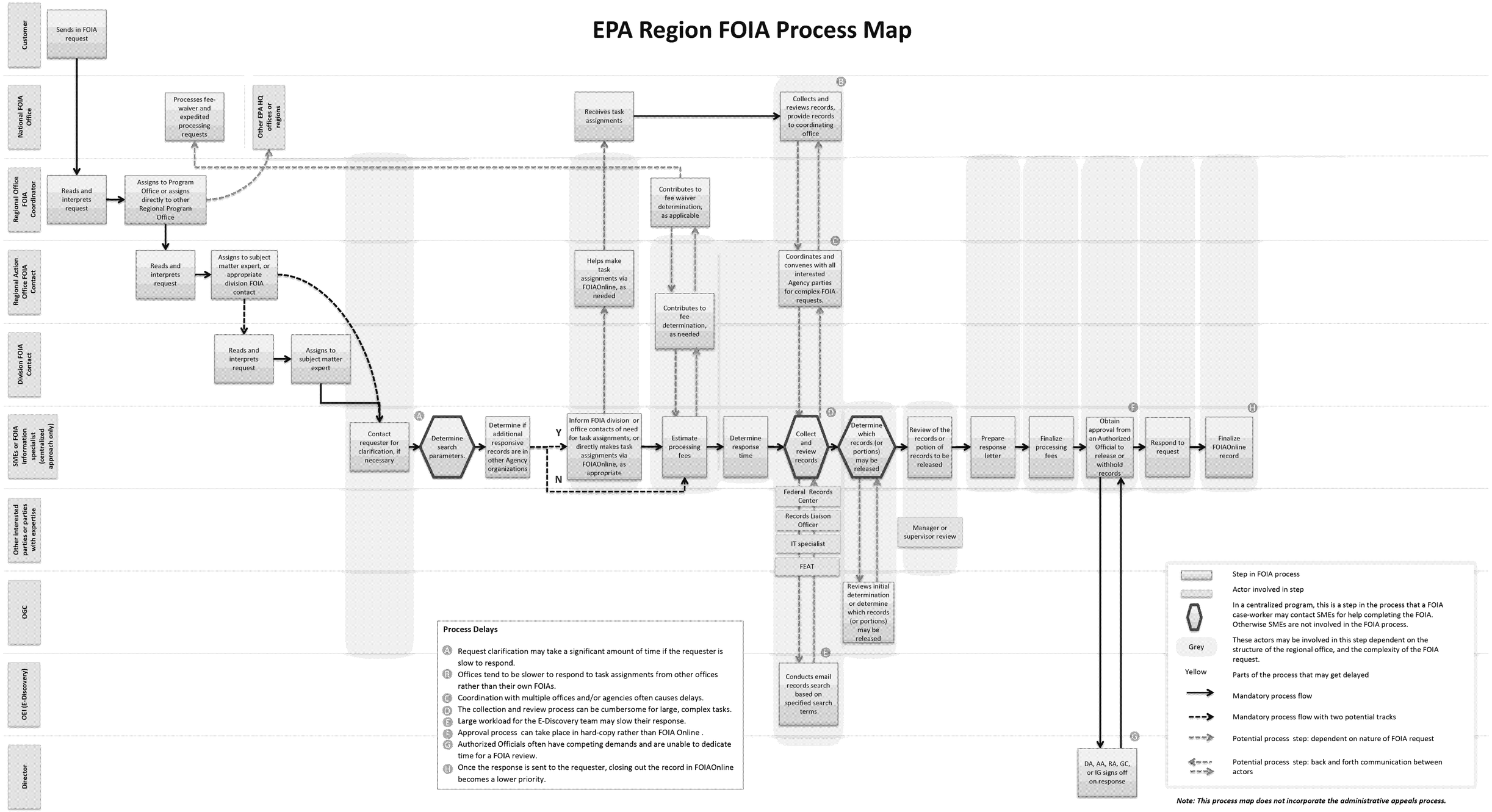


Process Delays

- A Delays occur when National FOIA Office incorrectly assigns FOIAs. HQ offices must take the time to determine which offices are likely to have responsive records. In some cases the process can be stuck in a loop when the National FOIA office repeatedly assigns the FOIA to the incorrect HQ office.
- B Request clarification may take a significant amount of time if the requester is slow to respond.
- C Offices tend to be slower to respond to task assignments from other offices rather than their own FOIAs.
- D Coordination with multiple offices and/or agencies often causes delays.
- E The collection and review process can be cumbersome for large, complex tasks.
- F Large workload for the E-Discovery team may slow their response.
- G Approval process can take place in hard-copy rather than FOIA Online.
- H Authorized Officials often have competing demands and are unable to dedicate time for a FOIA review.
- I Once the response is sent to the requester, closing out the record in FOIAOnline becomes a lower priority.

Note: This process map does not incorporate the administrative appeals process.

EPA Region FOIA Process Map



Note: This process map does not incorporate the administrative appeals process.

APPENDIX G: DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION FOIA CASE STUDY

Table 1. FOIA requests received 2008-2013

	OSHA	EPA
Average	9,167	10,330
Minimum	8,251	9,951
Maximum	12,646	11,492

IEc identified the Department of Labor (DOL), Occupational Safety and Health Administration (OSHA) as the best candidate for a case study of another agency's FOIA program due to its similar volume of FOIA requests, regulatory nature, and regional structure. **Table 1** presents information on the number of FOIA requests received between 2008 and 2013 for OSHA and EPA. OSHA is a regulatory agency with the same ten-region structure and geographic jurisdictions as EPA. Although OSHA has not realized a backlog reduction in the past six years, it consistently has low numbers of backlogged requests (six-year average: 2.1%). Like EPA, OSHA has a highly decentralized FOIA process.

Table 2. FOIA average annual processing costs 2009-2013

	OSHA	EPA
Average cost (million)	$12.3	$16.5
Average personnel (FTE)	62.8	120.3

In recent years (2009-2013), OSHA has incurred lower total costs for its FOIA program than EPA, with fewer total full-time FOIA staff (see **Table 2**). Between 2001 and 2011, OSHA processed a greater number of complex FOIA requests compared to EPA (3,389 and 193, respectively), but in 2012 EPA's number of complex requests jumped to 4,136, a value similar to OSHA's 3,996 (see **Figure 1**).

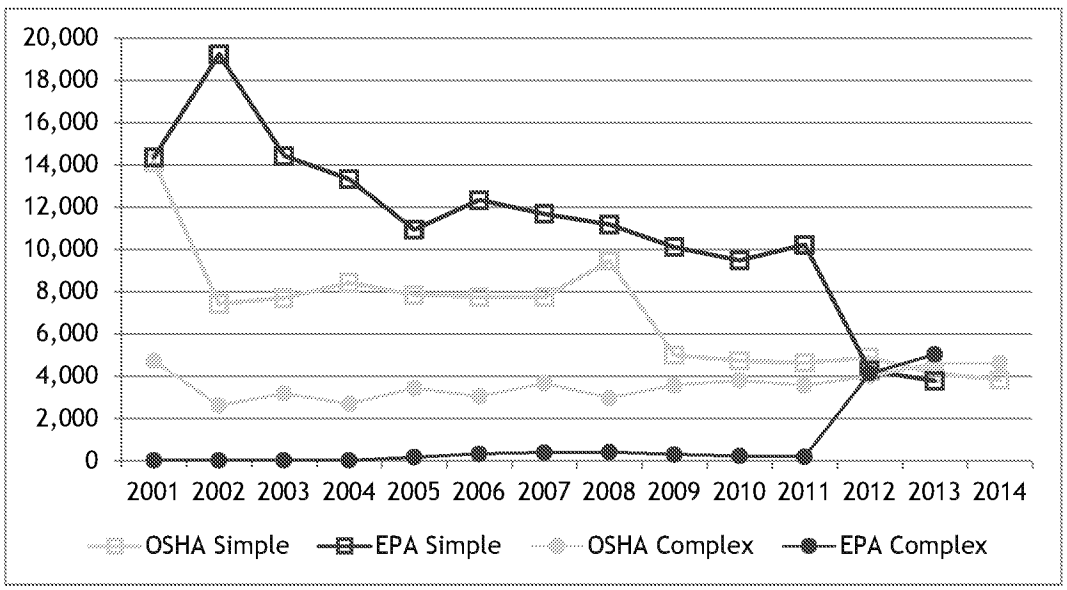


Figure 1. Number of FOIA requests received by EPA and OSHA 2001-2014

This case study discusses OSHA's FOIA program structure and practices, and describes best practices that help ensure accountability and consistency.

Program Structure. OSHA has a highly decentralized FOIA program. The bulk of processing takes place in area offices, and every area office has a FOIA officer (majority have collateral duties) that researches, drafts, and prepares FOIA responses. OSHA has approximately five full-time FOIA staff and approximately 65 Agency FOIA FTE. OSHA has considered centralizing its FOIA program to increase efficiency and staff expertise. However, resource allocation complications have slowed centralization efforts.

Request management. Requesters may submit requests via e-mail, fax, or postal mail. OSHA uses DOL's internal tracking system for acknowledging and assigning FOIA requests. OSHA has considered using FOIAonline but does not currently use it.

Nature of FOIA requests. The majority of FOIA requests pertain to enforcement files in health and safety investigations, and most of these requests are narrow in scope. Requesters often target specific investigation cases using tracking number(s). FOIA officers may spend between 15 minutes and three hours on simple requests, while complex requests may take between approximately 500 and 1000 hours.

Communication with requesters. Communication with requesters may occur at different points in the FOIA process. If the request is large, the lead FOIA officer may coordinate with the requester to narrow the scope of the request. Attorneys may also seek clarification with the requester. OSHA's training emphasizes the importance of communication with requesters.

Records management. OSHA does not currently have a centralized records management system. Potentially responsive records may be located in multiple places across the Agency including at the directorates, regions, area offices, off-site, or on electronic servers. The majority of OSHA records are currently paper-based, but OSHA is undergoing an effort to digitize all records by 2019.

Review process. All FOIA responses go through two reviews prior to release, including one review by the head of the area office. If sensitive, attorneys may review responses; and if uniquely sensitive, regional offices or OSHA management may review responses.

Technology. FOIA officers may use Microsoft Outlook to search for potentially responsive e-mails, Adobe 11 for redaction, and Lexus Nexus for organizing, sorting, and de-duplicating records. OSHA is also examining technology for video/ audio redaction. An interviewee at OSHA indicated that other federal agencies have more advanced software for searching and de-duplicating responsive records.

Select OSHA Best Practices	
Cross- Agency communication	OSHA's strong communication culture leads to greater efficiency and accountability. OSHA staff are accessible and responsive to one another. OSHA is considering using video-chat to increase Agency communication.
Management support for FOIA	Management support for FOIA includes: resources for the FOIA program and management recognition of FOIA accomplishments. Management support for FOIA also provides additional attention, resources, and training. In some instances OSHA managers personally recognize staff for FOIA efforts and performance, further incentivizing staff to provide high-quality FOIA responses.
Support for FOIA staff	FOIA officers are present in every area office across OSHA, and OSHA strives to make FOIA roles more attractive in order to retain a high level of expertise. However, OSHA also identified a need to strengthen succession planning for FOIA positions across the Agency.

APPENDIX H: EPA FOIA LEAN CASE STUDY

BACKGROUND

This FOIA Lean case study summarizes and synthesizes lessons learned from four FOIA-related Lean events in OAR, Region 3, Region 7, and Region 10.[63] IEc reviewed written materials from each office/region that held a Lean event, including PowerPoint presentations and meeting briefs, and conducted targeted interviews with EPA employees involved in the Lean events, to develop this case study.[64] In general, offices/regions used Lean events to analyze their current FOIA process, identify problem areas, draft objectives for improvement, and develop plans to implement an improved FOIA process. **Exhibit 1** summarizes the overarching goals for each office/region Lean event and the "report-out" date for the Lean event results. The remainder of this case study discusses common FOIA-related Lean objectives and implementation strategies, potential Lean event benefits, and considerations for conducting a Lean event, including measurement considerations.

EXHIBIT 1. AGENCY FOIA-RELATED LEAN EVENTS CONDUCTED TO-DATE

OFFICE/REGION	GOAL	RESULTS REPORTED
OAR	To streamline the process and reduce the time required to respond to FOIA and Congressional requests.	1/9/2015
Region 3	To improve the efficiency and effectiveness of the FOIA process while incorporating new guidance from Headquarters and capitalizing upon available technologies.	9/11/2013
Region 7	To analyze and develop an implementation plan to improve the process of responding to FOIA requests from receipt to delivery of final response.	10/1/2014
Region 10	To create a clear, consistent FOIA process across regional offices.	Fall 2013

COMMON FOIA-RELATED LEAN RESULTS

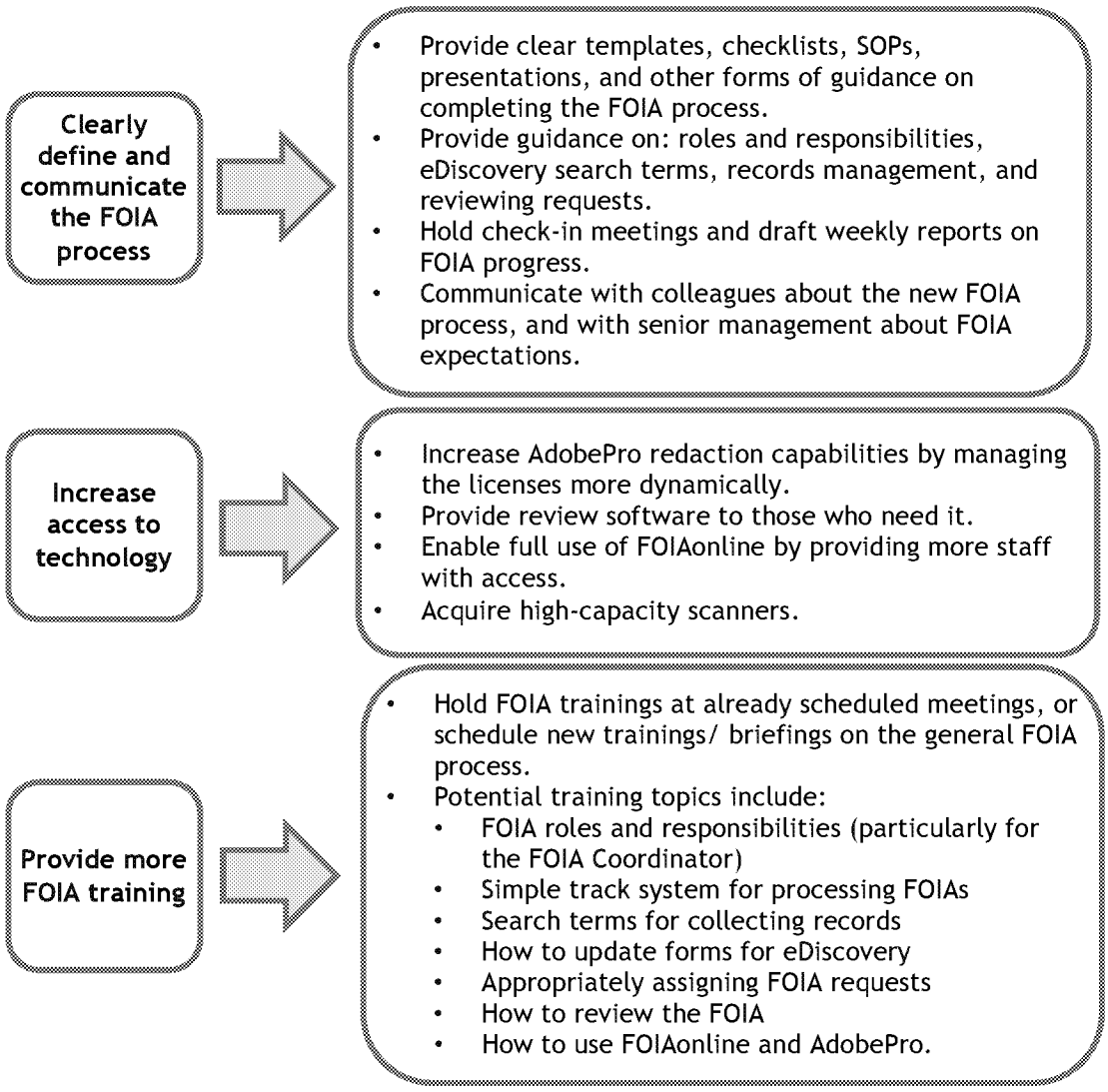
The Lean events produced several objectives and strategies for improving the FOIA process. Organizations considering implementing a FOIA-related Lean event may find these results applicable to their respective office or region. As shown in **Exhibit 2**, the following FOIA improvement objectives emerged across offices/regions: clearly define and communicate the FOIA process; increase access to technology; and provide more FOIA training. Offices/regions developed strategies to implement these objectives, including: provide clear templates, checklists, SOPs, and presentations; increase

[63] The organizations conducted Lean, Kaizen, or process improvement events - for simplicity, we refer to these collectively as "Lean events."

[64] IEc reviewed documents from Region 10's FOIA-related Lean event, but did not interview EPA Lean experts from Region 10. For a full list of written materials relied upon, please see references at the end of this document.

AdobePro redaction capabilities by managing the licenses more dynamically; and hold trainings at already scheduled meetings. Additional potential implementation strategies are presented on the right side of **Exhibit 2**. While offices/regions have implemented many of these strategies, our interviews suggest that other strategies are still being implemented.

EXHIBIT 2. SUMMARY OF OBJECTIVES AND POTENTIAL IMPLEMENTATION STRATEGIES



POTENTIAL LEAN EVENT BENEFITS

Offices/regions identified two types of beneficial impacts related to the Lean event: immediate improved cross-office communication and employee empowerment; and long-term process improvement benefits if all planned changes are fully implemented. Cross-office communication improves as staff discuss the FOIA process at the Lean event and understand the roles and responsibilities of their peers. Employee empowerment occurs as staff identify issues with the FOIA process and subsequently improve their understanding

of the process. FOIA-related Lean outputs and interviews identified other longer-term benefits of the Lean events, including:

- Reduced FOIA processing time;
- Less frustration and confusion about the FOIA process;
- More efficient process with fewer steps;
- Less disruptions to the day-to-day office/region activities in order to process requests;
- Improved quality of FOIA responses; and
- Long-term improved cross-office communication.

CONSIDERATIONS WHEN CONDUCTING A FOIA LEAN EVENT

Some offices/regions provided advice and lessons learned from their Lean event that may assist other offices/regions in efficiently planning and conducting a FOIA-related Lean event. Findings include:[65]

- No single EPA staff person has a complete understanding of the work done by every person at each step in a process;
- Senior manager support of the FOIA-related Lean event is essential;
- Cross-office participation in the Lean event is important to capture all aspects of the process, leads to synergy, and builds camaraderie;
- Being able to discuss the process and ideas with the relevant staff is key to a successful Lean process;
- A focused week-long event is more effective than multiple meetings stretched over time;
- After the event, while more people are involved and aware of the FOIA process, this may lead to staff frustration due to multiple opinions regarding the appropriate improvement strategy; and
- Agency policy can affect Lean implementation – one region indicated that the requirement for authorized official sign-off negated the benefits of their Lean event.

Offices/regions should also consider tracking metrics both before and after the Lean event to assess the success of a FOIA-related Lean event in the long term. Previous FOIA-related Lean events identified the following metrics to track the results of an improved FOIA process:

- Number of FOIA staff meetings;
- Number of backlogged FOIA requests;

[65] Since offices/regions are still implementing some strategies, additional lessons may be forthcoming.

- Number of FOIA trainings;
- Percent of FOIA requests correctly assigned; and
- Processing time at each stage of the FOIA process.

It will be important to track these types of metrics for the events that have already been conducted and for any future events. IEc attempted to examine FOIA-related Lean event impacts on percent backlog for OAR, Region 3, Region 7, and Region 10, but data limitations (i.e., lack of access to 2015 data) precluded such an assessment.

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U.S. Environmental Protection Agency Region 7. (2014, August). Process Excellence Project Pre-Kaizen Meeting: Region 7 FOIA Process. [PowerPoint slides].

U.S. Environmental Protection Agency Region 7. (Undated). Process Excellence Project Report Out: FOIA Process. [PowerPoint slides].

U.S Environmental Protection Agency Region 10. (2015, October). FOIA Lean Brief.

APPENDIX I: SURVEY OUTPUT TABLES

Question 1:

Are you currently employed by the U.S. Environmental Protection Agency?		
Answer Options	Response Percent	Response Count
Yes	94.9%	554
No	5.1%	30
N = 584		

Question 2:

On average, what proportion of your time at work involves working on FOIA? (Select one.)		
Answer Options	Response Percent	Response Count
More than 50%	61.8%	342
Between 25-50%	11.4%	63
Between 10-25%	6.1%	34
Between 1-10%	13.2%	73
None	7.4%	41
N = 553		

Question 3:

Do you have a title or role in the FOIA program? (Select all that apply.)		
Answer Options	Response Percent	Response Count
FOIA Role	37.1%	159
Subject Matter Expert or No Role	62.9%	270
N = 429		

Question 4:

Have you ever participated in FOIA training offered by EPA? (Select one.)		
Answer Options	Response Percent	Response Count
Yes, within the last year.	39.4%	169
Yes, between 1-3 years ago.	29.6%	127
Yes, more than three years ago.	12.6%	54
No.	18.4%	79
N = 429		

Question 5:

What office or region do you work in? (Select one.)		
Answer Options	Response Percent	Response Count
Office of the Administrator	1.9%	8
Office of Administration and Resources Management	3.3%	14
Office of Air and Radiation	1.6%	7
Office of Chemical Safety and Pollution Prevention	4.4%	19
Office of the Chief Financial Officer	0.7%	3
Office of Enforcement and Compliance Assurance	3.7%	16
Office of Environmental Information	1.9%	8
Office of General Counsel	1.6%	7
Office of Inspector General	0.7%	3
Office of International and Tribal Affairs	0.5%	2
Office of Research and Development	2.8%	12
Office of Solid Waste and Emergency Response	4.9%	21
Office of Water	4.2%	18
Region 1	4.9%	21
Region 2	3.7%	16
Region 3	5.8%	25
Region 4	0.9%	4
Region 5	7.9%	34
Region 6	3.5%	15
Region 7	3.5%	15
Region 8	15.2%	65
Region 9	0.9%	4
Region 10	21.4%	92
N = 429		

Question 6:

Are you familiar with changes in the Agency's FOIA procedures that the Chief Information Officer issued on September 30, 2014, and that were incorporated into office-specific and region-specific FOIA procedures by March 30, 2015? (Select one.)		
Answer Options	Response Percent	Response Count
Yes, I am very familiar with changes to FOIA procedures.	24.0%	103
Yes, I am somewhat familiar with changes to FOIA procedures.	33.6%	144
I have heard of changes to FOIA procedures but I don't know much about them.	27.3%	117
I am not aware of changes to FOIA procedures.	15.2%	65
N = 429		

Question 7:

How were changes to FOIA procedures communicated to you? (Select all that apply.)		
Answer Options	Response Percent	Response Count
I received a copy of new procedures.	29.4%	107
I received a written summary of new procedures.	15.1%	55
I received a presentation of new procedures.	16.2%	59
I participated in in-person training.	14.3%	52
I participated in online training.	7.7%	28
I don't remember / I'm not sure.	33.8%	123
Other (please specify)	12.6%	46
N = 364		

Question 8:

Indicate if the following were true or false ONE YEAR AGO.		
Answer Options	Percent of Responses for TRUE	Count of Responses for TRUE
I used FOIAonline to manage or respond to all FOIA requests.	64.8%	278
I used a management and tracking system other than FOIAonline to process all FOIA requests.	18.6%	80
At least one other EPA staff person reviewed documents before they were released to the requester.	86.7%	372
I always released records requested unless one of the mandatory exemptions applied or if I made a determination of foreseeable harm.	75.8%	325
I received FOIA training annually.	28.0%	120
My FOIA responsibilities were included in my personnel performance agreement.	39.4%	169
N = 429		

Question 9:

Indicate if the following were true or false AT THE PRESENT TIME.		
Answer Options	Percent of Responses for TRUE	Count of Responses for TRUE
I used FOIAonline to manage or respond to all FOIA requests.	79.5%	341
I used a management and tracking system other than FOIAonline to process all FOIA requests.	14.9%	64
At least one other EPA staff person reviewed documents before they were released to the requester.	90.7%	389
I always released records requested unless one of the mandatory exemptions applied or if I made a determination of foreseeable harm.	82.1%	352
I received FOIA training annually.	37.3%	160
My FOIA responsibilities were included in my personnel performance agreement.	41.5%	178
N = 429		

Question 10:

What are your FOIA responsibilities? (Select all that apply.)		
Answer Options	Response Percent	Response Count
Receive and review incoming FOIA requests.	41.0%	176
Assign FOIA tasks to other staff within my office/region.	32.2%	138
Assign FOIA tasks to other staff outside of my office/region.	10.0%	43
Assign FOIA requests to other staff within my office/region.	24.0%	103
Assign FOIA requests to other staff outside of my office/region.	7.9%	34
Conduct research to respond to requests.	64.3%	276
Search for responsive records.	75.5%	324
Review potentially responsive records for relevance.	60.6%	260
Redact records to be released.	45.0%	193
Review responses prepared by others.	47.6%	204
Communicate with requesters.	54.5%	234
Close out requests.	42.4%	182
N = 429		

Question 11:

How much do your FOIA responsibilities vary in terms of time commitment from week to week? (Select one.)		
Answer Options	Response Percent	Response Count
Quite variable: Some weeks I work on FOIA a lot and some weeks not at all.	27.5%	118
Somewhat variable: Some weeks I have more FOIA work than other weeks.	11.7%	50
Consistent: My FOIA workload is rather consistent from week to week.	14.0%	60
I only respond to the occasional FOIA request.	46.9%	201
N = 429		

Question 12:

How much do your FOIA responsibilities vary in terms of time commitment from week to week? (Select one.)					
	0 (hours)	1 to 10 (hours)	11 to 100 (hours)	101 to 1000 (hours)	Over 1000 (hours)
Average (hours) *	32	146	39	5	0
Minimum (hours)	64	126	15	2	0
Maximum (hours)	11	93	72	27	4
N = 207; * N = 222					

Question 13:

How much do your FOIA responsibilities vary in terms of time commitment from week to week? (Select one.)					
	Extremely Important	Important	Moderately Important	Somewhat Important	Not Very Important
Helping to reduce the FOIA backlog/maintaining a low backlog.	154	77	46	39	113
Following current FOIA procedures.	228	111	37	23	30
Providing high-quality responses to FOIA requests.	248	117	33	16	15
N = 429					

Question 14:

How often do you coordinate with others to process FOIA requests? (Select one.)		
Answer Options	Response Percent	Response Count
I coordinate with others on all FOIA requests.	58.3%	250
I coordinate with others on most FOIA requests.	11.2%	48
I coordinate with others on some FOIA requests.	10.7%	46
I coordinate with others on few FOIA requests.	16.1%	69
I never coordinate with others on FOIA requests.	3.7%	16
N = 429		

Question 15:

On average, how much of the time spent on FOIA requests involves coordinating with others? (Select one.)		
Answer Options	Response Percent	Response Count
A lot of time is spent on coordination.	32.2%	133
Some time is spent on coordination.	26.9%	111
Minimal time is spent on coordination.	40.9%	169
N = 413		

Question 16:

With whom do you coordinate to process FOIA requests? (Select all that apply.)		
Answer Options	Response Percent	Response Count
Subject matter specialists in my office	71.9%	297
Subject matter specialists in other offices	42.9%	177
FOIA officers/coordinators in my office	74.3%	307
FOIA officers/coordinators in other offices	32.7%	135
National FOIA Office	14.5%	60
Regional FOIA Office	36.6%	151
Office of Environmental Information (OEI)	11.4%	47
Office of General Counsel (OGC)	28.3%	117
Office of Regional Counsel (ORC)	44.3%	183
Others in my office or other offices (please specify)	2.9%	12
N = 413		

Question 17:

What parts of the FOIA process do you coordinate with others on? (Select all that apply.)		
Answer Options	Response Percent	Response Count
Receive and review incoming FOIA requests.	43.3%	179
Assign requests to other staff.	40.0%	165
Conduct research to respond to requests.	59.1%	244
Search for responsive records.	71.9%	297
Review potentially responsive records for relevance.	63.9%	264
Redact records to be released.	48.7%	201
Review responses prepared by others.	47.0%	194
Communicate with requesters.	49.4%	204
Close out requests.	37.5%	155
N = 413		

Question 18:

On average, how efficient or inefficient is your office at processing FOIA requests? (Select one.)		
Answer Options	Response Percent	Response Count
Very efficient	28.7%	123
Somewhat efficient	44.8%	192
Somewhat inefficient	13.8%	59
Very inefficient	12.8%	55
N = 429		

Question 19:

What, if any, do you see as barriers to greater efficiency in processing FOIA requests in your office/region? (Select all that apply.)		
Answer Options	Response Percent	Response Count
Inconsistent following of FOIA procedures	27.3%	117
Confusion about FOIA procedures	50.8%	218
Confusion about FOIA policy	36.8%	158
Not enough staff time dedicated to FOIA processing	51.5%	221
Fragmented FOIA processing (too many different people or offices working on the same requests)	41.7%	179
Trouble finding relevant records and emails	38.2%	164
Inefficiencies in documenting responses	24.0%	103
Inefficiencies in communicating with others about workflow	30.1%	129
Inefficiencies in redaction process	23.1%	99
None of the above	16.6%	71
Other (please specify)	35.7%	153
N = 429		

Question 20:

Which, if any, of the following approaches to streamlining the FOIA process are you currently implementing in your office/region? (Select all that apply.)		
Answer Options	Response Percent	Response Count
Increased centralization of FOIA responsibilities with a smaller group of staff in my office	35.0%	150
Increased centralization of FOIA responsibilities within a core FOIA group at HQ	6.3%	27
Greater use of proactive disclosure: releasing records on the EPA website that may be of interest to the public	26.1%	112
Testing new technologies to manage the FOIA process	20.0%	86
Holding a FOIA Lean event	12.4%	53
None of the above	42.4%	182
Other (please specify)	14.0%	60
N = 429		

Question 21:

Which, if any, of the following approaches to streamlining the FOIA process would you support testing in your office/region? (Select all that apply.)		
Answer Options	Response Percent	Response Count
Increased centralization of FOIA responsibilities with a smaller group of staff in my office	41.49%	178
Increased centralization of FOIA responsibilities within a core FOIA group at HQ	22.84%	98
Greater use of proactive disclosure: releasing records on the EPA website that may be of interest to the public	42.42%	182
Testing new technologies to manage the FOIA process	49.42%	212
Holding a FOIA Lean event	24.24%	104
None of the above	20.05%	86
Other (please specify)	9.79%	42
N = 429		

Question 22:

We are interested in whether or not you have the technology you need to efficiently process FOIA requests. Please review the following list and check the items for which you have adequate technology. (Select all that apply.)		
Answer Options	Response Percent	Response Count
Workflow management and communications	43.4%	186
Searching for similar FOIA requests	23.8%	102
Redaction	33.3%	143
Compiling and organizing relevant records	32.6%	140
None	32.9%	141
N = 429		

Question 23:

Was there a time when you did not have access to adequate technology for processing FOIA requests?		
Answer Options	Response Percent	Response Count
Yes	62.5%	180
No	37.5%	108
N = 288		

Question 24:

Please estimate the number of hours you now save processing an average FOIA request by having adequate technology. (Please round to the nearest whole number; do not use decimals or fractions. If you spend less than 30 minutes, please enter 0.)		
Answer Options	Response Percent	Response Count
0 (hours)	38.3%	69
1 to 10 (hours)	53.9%	97
10 to 100 (hours)	6.7%	12
Over 100 (hours)	1.1%	2
N = 180		

Question 25:

Do you know about the OEI eDiscovery email search console for identifying records and emails?		
Answer Options	Response Percent	Response Count
Yes	42.2%	181
No	57.8%	248
N = 429		

Question 26:

When processing FOIA requests, how often do you request or conduct searches through the OEI eDiscovery email search console? (Select one.)		
Answer Options	Response Percent	Response Count
Always	12.2%	22
Sometimes	30.9%	56
Rarely	23.2%	42
Never	33.7%	61
N = 181		

Message

From: Youngblood, Charlotte [Youngblood.Charlotte@epa.gov]
Sent: 7/17/2018 1:22:19 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]
Subject: FW: Final Signed Letter
Attachments: Letter to Ranking Member Elijah E. Cummings Regarding EPA's FOIA Expert Assistance Team.pdf

This is a great letter. Thanks for sharing it. I think the more the agency can come out affirmatively and demonstrate that we really have a broad "transparency initiative" at play here, the better.

Charlotte Youngblood
Deputy Associate General Counsel
General Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-0283
youngblood.charlotte@epa.gov

From: Minoli, Kevin
Sent: Sunday, July 15, 2018 6:07 PM
To: Bigioni, Neil <bigioni.neil@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>
Cc: Packard, Elise <Packard.Elise@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Youngblood, Charlotte <Youngblood.Charlotte@epa.gov>
Subject: FW: Final Signed Letter

This should be sent to the Hill today or tomorrow. I would hold on sharing it until it does, but want to send it to you before it went.

Matt, Beth and I have been invited to a meeting with the Acting Administrator on FOIA at 9:15 on Tuesday. Not sure what it will entail or if we can bring additional people. I will try and find out if it is a briefing we are giving him (in which case I will need the help of all on here to get materials ready Monday) or a meeting where he is going to provide direction to us. Kevin

Kevin S. Minoli
Principal Deputy General Counsel
& Designated Agency Ethics Official
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8064

From: Minoli, Kevin
Sent: Sunday, July 15, 2018 6:01 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: Final Signed Letter

Here it is. Ryan, I will leave it to you to transmit it, if that works. Thanks, Kevin

Kevin S. Minoli
Principal Deputy General Counsel
& Designated Agency Ethics Official

Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8064

Message

From: Bigioni, Neil [bigioni.neil@epa.gov]
Sent: 8/2/2018 9:00:53 PM
To: Leopold, Matt (OGC) [Leopold.Matt@epa.gov]
CC: Veney, Carla [Veney.Carla@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; Mills, Derek [Mills.Derek@epa.gov]; Blake, Wendy [Blake.Wendy@epa.gov]; Monson, Mahri [Monson.Mahri@epa.gov]
Subject: RE: FOIA meeting tomorrow with Acting Adm Wheeler
Attachments: FOIA Briefing Best Practices AO4 and Litigation 8.3.2018.docxwb.docx

This time with the attachment.

From: Bigioni, Neil
Sent: Thursday, August 2, 2018 4:57 PM
To: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Cc: Veney, Carla <Veney.Carla@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Mills, Derek <Mills.Derek@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Monson, Mahri <Monson.Mahri@epa.gov>
Subject: RE: FOIA meeting tomorrow with Acting Adm Wheeler

I have revised the paper in a way that I hope invites discussion rather than presents the best practices as de facto implementable. Derek, please share this version of the 3 papers with Aaron.

Neil

Neil R. Bigioni
Acting Director National FOIA Office
EPA Office of General Counsel
(202) 564-2281

From: Leopold, Matt (OGC)
Sent: Thursday, August 2, 2018 4:43 PM
To: Bigioni, Neil <bigioni.neil@epa.gov>
Cc: Veney, Carla <Veney.Carla@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Mills, Derek <Mills.Derek@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>
Subject: Re: FOIA meeting tomorrow with Acting Adm Wheeler

If there are things in the paper that exceed the scope of what we want to raise we should not provide it. If there is a more focused version please share with Aaron.

Sent from my iPhone

On Aug 2, 2018, at 3:04 PM, Bigioni, Neil <bigioni.neil@epa.gov> wrote:

> Will do.
>
> Do you want to provide the AO4, Best Practices and Litigation memos or have them for ourselves to use as talking points?

From: Leopold, Matt (OGC)
Sent: Thursday, August 2, 2018 4:02 PM
To: Veney, Carla <Veney.Carla@epa.gov>
Cc: Bigioni, Neil <bigioni.neil@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Mills, Derek <Mills.Derek@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>
Subject: Re: FOIA meeting tomorrow with Acting Adm Wheeler

Yes let's please provide the draft FOIA fishbowl memo.

Sent from my iPhone

On Aug 2, 2018, at 2:33 PM, Veney, Carla <Veney.Carla@epa.gov> wrote:

> His assistant Aaron Dickerson called and asked for briefing materials by cob today. Will we be providing anything beforehand?

AO4 CENTRALIZATION PILOT PROJECT

Background

- Chief of Staff Ryan Jackson asked OGC to assist the Administrator's Office responding to a large increase in the number of FOIA requests compared to 2016.
- OGC hired three additional attorneys and deployed a total of 4 members of OGC's National FOIA Office FOIA Expert Assistance Team (FEAT) to the Administrator's Office for the Pilot.
- Expectation was that by centralizing and prioritizing the responsibility for FOIA requests, the office would produce more timely responses with fewer errors and with fewer resources.
- After multiple lean events and prototype exercises, the FEAT and representatives from the AO Immediate Office (OEX), the Office of Public Affairs (OPA), the Office of Policy (OP) and the Office of Congressional and Intergovernmental Relations (OCIR) (collectively referred to as AO4) began to implement the AO FOIA Centralization Pilot Project on April 30, 2018.

Accomplishments to Date

- The two Lean events resulted in a new centralized process for all four offices.
- On June 6, 2018, 1300+ requests then pending received an update that included a tracking number, where the request currently stood in the queue of pending requests, an agency contact, and an estimated response date.
- All existing and incoming requests are categorized in a newly developed standard taxonomy and each subject category has been assigned an AO4 staff member as the Project Lead for that category of requests.
- Each document processed is now stamped with a unique identifier so that every document can be tracked at all stages of the response process.
- Because the team has now identified every pending request as relating to one or more standardized categories, the team can quickly identify other pending requests to which a document production is responsive and send responsive productions to each of those requestors as well.
- Categorization and tracking has potential to reduce the time it takes the AO to respond to requests. While much more progress must be made, since implementation, the team has completed its response to 124 requests and provided interim responses to 341 additional requests between April 30 and July 27, 2018.

Next Steps

- Project Leads are analyzing the FOIA requests in the category assigned to him/her. The Project Lead will identify oldest requests, identify similar requests, identify interim responses that can be provided from previous releases, identify requests that can be

closed, clarify or narrow requests as needed, and develop searches to be sent to OEI Discovery Services for search and collection.

- EPA will assign 10-12 additional AO staff and begin training them on Relativity and the review process using the 25,000 AO records currently ready for review (Beachhead Team and Transition Team document collections).
- Need to develop long-term plan to turn over AO4 project management to OEX.

FOIA PROPOSED BEST PRACTICES

It is important to the Agency's mission to increase the quality, pace and professionalism of the EPA's national FOIA processes. EPA took a major step toward achieving these goals with a multi-day Kaizen event held in February 2018. That Kaizen event resulted in two pilot projects that the National FOIA Office (NFO) has led in conjunction with the Office of Continuous Improvement (OCI). One pilot that has focused on decreasing the time it takes to decide expedited processing and fee waiver requests. The second pilot is examining workflow to identify bottlenecks and help streamline the response process. These pilots may also help identify tools and opportunities for the National FOIA Office to provide training and assistance to responding. Additionally, the data being generated from these projects may indicate additional or different problems or approaches to solutions than are set forth below. The practices described below should therefore be considered to be aspirational and "best" only as a provisional or interim step to achieving a comprehensive revision of the Agency's FOIA response process.

Demonstrate EPA's Commitment to Transparency Through Accountability

- Recommend that all FOIA professional staff within a Region or National Program should report to a senior level supervisor (GS 14 or 15), who in turn should report directly to an SES level supervisor. The SES level supervisor will be responsible for: ensuring that the staff comply with all applicable laws, regulations, and applicable Agency policies and guidance, developing, and ensuring compliance with, local FOIA policies and guidance, and ensuring that the office maintains adequate staffing to run the program at a professional level.

- All offices that process FOIA should take steps to implement the visual management tools for tracking FOIA processing developed or being developed by the NFO and the OCI. As a component of the visual management tool, the office shall track the number of FOIAs responded to on time, the number of FOIA responses appealed, and whether the appeal is granted or denied in whole or part. This information would be reported to the NFO on a periodic basis (frequency to be established).

- All persons (staff and managers) with FOIA responsibilities should be made accountable for those responsibilities by having specific provisions in their performance agreements.

Continued Development of a Skilled Corps of FOIA Professionals

- New FOIA staff should be hired as Government Information Specialists (GIS), Series 306. Management should examine whether existing FOIA staff should be reclassified to this job series. This series was specifically created to include positions responsible for administering, analyzing, supervising, or performing work involved in establishing, disseminating or managing Government information. Government Information Specialists can formulate policy, advise agency management, and ensure compliance with Federal laws governing the flow of information.

- The NFO and the General Law Office (GLO) should strive to make available in-person FOIA training in all regions and national program offices for managers and supervisors that oversee any aspect of the Agency's FOIA response. This training is the natural and planned follow-on to 2017 training NFO FEAT and GLO offered to first level FOIA professionals.

- The NFO and GLO should begin developing compulsory training for all FOIA Officers and Coordinators, who will be expected to complete this standardized, possibly web-based, training before being appointed to those positions (or, if appointed on an emergency or interim basis, complete the training within two weeks of their appointment).

- EPA should dedicate funding for an annual national FOIA conference.

Support and Promote Technology

The NFO and GLO, in conjunction with OEI Discovery services, explore developing standardized Relativity training to enhance competency in the new Relativity 9.5 review platform that was deployed on July 9 by OEI Discovery Services. Any training would include new Relativity analytics features, which are anticipated to be deployed in January 2019.

Apply EPA FOIA Procedures and Policies Consistently Across the Agency

- All programs should conduct defensible searches for responsive documents using the Agency's established procedures, including use of the OEI centralized search of Outlook emails, where appropriate. See [HYPERLINK "http://intranet.epa.gov/foia/MS-Outlook-Email-Search.html"].

- All programs should refer to the FOIA Toolkit (([HYPERLINK "https://usepa.sharepoint.com/sites/ogc_Community/NFT2017/Documents/Conference%20Materials/FOIA%20Toolkit.PDF"]) when responding to FOIAs. The Toolkit follows the lifecycle of a FOIA and provides important best practices for efficient FOIA processing.

- The Agency should amend its FOIA regulations to centralize all FOIA intake within the NFO. Regulations should also be amended to give direction to responding offices after a FOIA appeal has been remanded (where the FOIA will go in the queue, time frame to act). Until the FOIA regulations are amended, program offices should develop local procedures for handling remanded FOIA appeals to ensure efficient processing of the remanded FOIAs.

FOIA LITIGATION

General Overview

- A FOIA requester can file suit in federal court if: (1) after exhausting its administrative appeal rights, it alleges the agency improperly withheld records, or (2) the agency failed to respond to the FOIA request within the statutory time-frame (known as "failure to respond" cases).

- The Agency currently has 68 FOIA cases pending, which is more than triple the highest number of cases pending between 2013-2015, the Agency's previous highwater mark for FOIA litigation. Over 80 percent of the pending cases are failure to respond cases.

- The majority of litigation stems from FOIAs assigned to: (1) the Office of the Administrator (AO) (35 cases); (2) the Office of Pesticides Programs (7 cases); and (3) the Office of Administration Resources Management (7 cases).

- Topics at issue in the AO FOIAs include: Calendar/Call logs; Travel; Ethics; Climate Change; Waters of United States; Superfund; Contracts; and Grants.

Strategies Being Employed to Address Current Caseload

- Given the over three-fold increase in FOIA litigation, the General Law Office has had to secure additional resources from other law offices to cover the case load. To date, we have utilized over 12 attorneys from other law offices, collectively constituting over two full-time FTE from other law offices.

- Recently, we secured additional attorney volunteers from Offices of Regional Counsel, who will be helping to handle the pending cases. We are also in the process of hiring four additional attorneys in the General Law Office, two of whom will handle general information law issues, including FOIA litigation, and two of whom will provide legal counseling work related to implementation of the 2016 amendments to the Toxic Substances Control Act.

- We are in the process of adding an additional Assistant General Counsel position in the General Law Office on a temporary basis to assist with, among other things, the management of FOIA litigation. Having two managers responsible for the burgeoning FOIA caseload will ensure that we have sufficient management coverage of the cases.

- We are also working closely with the Civil Division at the Department of Justice and the United States Attorney's Office in Washington, D.C., raising issues of improper requests to the highest levels of the organization.

General Case Strategies

- We carefully review all FOIA requests in litigation, making improper request arguments where the facts support such an argument.

- We continue to employ case strategies to narrow issues in litigation.
    - For example, once a production is complete in a failure to respond case, we work with the plaintiff to attempt to narrow the documents at issue in the case. Often, after some discussion regarding the basis for the Agency's withholdings, we can resolve the case without further litigation over the propriety of the withholdings.

- We are working to provide interim releases to FOIA litigants where the FOIA at issue concerns a subject matter to which we have previously responded under FOIA.

- We are working to set up meetings with institutional litigants (*i.e.,* those with several cases pending) and discuss prioritizing the litigants' FOIA requests, narrowing issues, and attempting to secure agreement on reasonable production schedules.

- In a failure to respond case, we work to identify a mutually agreeable production schedule with consent from the program office; agreeing to a production schedule avoids the court issuing an aggressive schedule that the agency cannot meet. If the parties cannot reach agreement on a schedule, the parties will brief the issue to the court.

- Finally, we are in the process of conducting a comprehensive evaluation of our cases to determine whether settlement would be in the best interest of the Agency. Where in the best interest of the government, we will work to resolve the cases, either by agreeing to make a discretionary release of a previously withheld document and/or paying attorney's fees where the plaintiff can show eligibility and entitlement.

Message

From: Bigioni, Neil [bigioni.neil@epa.gov]
Sent: 8/2/2018 8:09:15 PM
To: Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Blake, Wendy [Blake.Wendy@epa.gov]; Veney, Carla [Veney.Carla@epa.gov]; Mills, Derek [Mills.Derek@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; Monson, Mahri [Monson.Mahri@epa.gov]
Subject: Draft FOIA Memo - 08.01.18.GLO.docx
Attachments: Draft FOIA Memo - 08.01.18.GLO.docx

Latest draft

Neil

Neil R. Bigioni
Acting Director National FOIA Office
EPA Office of General Counsel
(202) 564-2281

Draft FOIA memo for issuance by Acting Administrator

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Message

From: Bigioni, Neil [bigioni.neil@epa.gov]
Sent: 8/2/2018 5:06:59 PM
To: Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]
CC: Blake, Wendy [Blake.Wendy@epa.gov]; Veney, Carla [Veney.Carla@epa.gov]; Mills, Derek [Mills.Derek@epa.gov]; Monson, Mahri [Monson.Mahri@epa.gov]; Patrick, Monique [Patrick.Monique@epa.gov]
Subject: FW: Draft FOIA Memo - 08.01.18.GLO.docx
Attachments: Draft FOIA Memo - 08.01.18.GLO.docx

Draft FOIA memo

From: Bigioni, Neil
Sent: Wednesday, August 1, 2018 3:00 PM
To: Mills, Derek <Mills.Derek@epa.gov>; Monson, Mahri <Monson.Mahri@epa.gov>
Cc: Packard, Elise <Packard.Elise@epa.gov>; Youngblood, Charlotte <Youngblood.Charlotte@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>; Moumbleaux, Joan <moumbleaux.joan@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Schumacher, Wendy <schumacher.wendy@epa.gov>
Subject: Draft FOIA Memo - 08.01.18.GLO.docx

Derek & Mahri,

Attached is a memo to be given to Acting Administrator Wheeler by Matt during his Friday morning FOIA meeting. GLO and the NFO have been working on this and wanted to give Kevin and opportunity to review before sending it to Matt. I understand that Kevin is out today and may not get to this. Even so, I would like to give him the opportunity to review if he can, but still ensure that if he cannot, it will still go to Matt tonight with the caveat neither Kevin nor Elise have seen this version.

Neil

Neil R. Bigioni
Acting Director National FOIA Office
EPA Office of General Counsel
(202) 564-2281

Draft FOIA memo for issuance by Acting Administrator

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Message

From: Packard, Elise [Packard.Elise@epa.gov]
Sent: 7/13/2018 8:02:10 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]
Subject: FW: Draft FIFO + AO4
Attachments: Draft FIFO Outline + AO4 07132018.docx

This is for something else, but might be helpful to you?

Elise B. Packard
Associate General Counsel for Civil Rights and Finance
U.S. EPA Office of General Counsel, Rm. 7353C
(202) 564-7729

From: Walker, Denise
Sent: Friday, July 13, 2018 4:01 PM
To: Bigioni, Neil <bigioni.neil@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: Draft FIFO + AO4

OK- I added this:
Take what you want from it. Elise, I'm coming up!

Ex. 5 Deliberative Process (DP)

On July 21, 2017, in response to identified issues with FOIA processing in the AO, the Chief of Staff directed the FOIA Expert Assistance Team (FEAT) to manage all incoming FOIA requests in the AO Immediate Office (OEX), the Office of Public Affairs (OPA), the Office of Policy (OP) and the Office of Congressional and Intergovernmental Relations (OCIR) in a document titled "AO FOIA Centralization Pilot Project Description." Each of the offices had increasing numbers of FOIA requests for which they are the lead office, different levels of expertise and capacity in FOIA processing, and the assigned resources did not match the volume or importance of FOIA needs. OGC's FEAT was tasked to provide project management and oversight for all FOIAs received by the four AO offices (now called the "AO4") involved to more efficiently and effectively manage current resources.

After multiple lean events and prototype exercises, the FEAT and the AO4 team implemented the AO FOIA Centralization Pilot Project on April 31, 2018. Currently, FEAT is coordinating the centralized FOIA efforts. The AO4 offices have over 1300 FOIA requests pending.
Since implementation, the team has closed 100 requests, provided 341 interim responses, and contacted over 1100 requesters in writing.

The team completed Phases I and II of implementation and is preparing to move to Phase III. In Phase III, the AO4 plans to submit a large e-discovery request (mid-July) for all potentially responsive documents. These will all be put into one Relativity workspace when the initial search is completed. Once the search is submitted, OEI will be able to provide the team with a pre-case assessment (PCA) so that we will know how many records total are in the workspace. Once the records are loaded and available, AO4 will do individual searches for each of the FOIA requests in date order, starting with the oldest expedited request. As soon as the search is created for the oldest expedited request, the team can create review batches based on that search and assign them. The reviewers will review those documents and apply exemptions. While the reviewers are working on the oldest requests, the database manager will continue creating the specific searches for the rest of the 1400 specific requests . Because the documents are all in one workspace, if the oldest request has documents that are responsive to newer requests, they will be slotted into those newer requests as

they are reviewed for the oldest request. So it is possible that as older requests are completed, some of the newer requests will be completed before they are actually reached in time. If the team was to run a separate search for each of the 1400 requests in order, the same documents would be reviewed over and over again-resulting in a higher risk of inadvertent release and inconsistent coding. Moreover, the team would need to set up hundreds of individual workspaces, the workspaces would take up much more data storage to host on EPA servers, and the review time would be extended exponentially.

Denise A. Walker
U.S. Environmental Protection Agency
Acting Assistant Director, OGC FOIA Expert Assistance Team
Washington, D.C. | 7308A WJCN
Office: 202-564-6520
EPA Cell: 202-816-9872

Have a FOIA question? Try here first!

From: Bigioni, Neil
Sent: Thursday, July 12, 2018 12:21 PM
To: Walker, Denise <Walker.Denise@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>
Subject: RE: Plan for processing AO docs

I think too specific (names etc.), though I think maybe the items to review section can form the basis of an AO4 Appendix.

From: Walker, Denise
Sent: Thursday, July 12, 2018 11:11 AM
To: Blake, Wendy <Blake.Wendy@epa.gov>; Bigioni, Neil <bigioni.neil@epa.gov>
Subject: Fwd: Plan for processing AO docs

Does this description at the very bottom from Elise below work for our FIFO memo?? She drafted with our input.

Sent from my iPhone

Begin forwarded message:

> **From:** "Bigioni, Neil" <bigioni.neil@epa.gov>
> **Date:** July 12, 2018 at 11:07:25 AM EDT
> **To:** "Packard, Elise" <Packard.Elise@epa.gov>
> **Cc:** "Blake, Wendy" <Blake.Wendy@epa.gov>, "Walker, Denise" <Walker.Denise@epa.gov>
> **Subject: FW: Plan for processing AO docs**
>
> Elise,
>
> Byron has scheduled a meeting (I sent this to you) on the FOIA process. We think his main focus will be litigation plus the type of workload visualization data we previously shared with Beth, but which I do not think has made much forward progress in the last week.
>
> ---
>
> **From:** Bigioni, Neil
> **Sent:** Monday, July 2, 2018 8:11 AM
> **To:** Packard, Elise <Packard.Elise@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>

Cc: Burke, Marcella <burke.marcella@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>; Rementer, Nicole <rementer.nicole@epa.gov>
Subject: RE: Plan for processing AO docs

I asked Region 3 to pull Relativity document review speeds for our Freedom WV spill mega-FOIA review. Our document review speeds were much slower than GKM, Bristol and Flint.

Ex. 5 Deliberative Process (DP)

From: Packard, Elise
Sent: Friday, June 29, 2018 5:33 PM
To: White, Elizabeth <white.elizabeth@epa.gov>
Cc: Burke, Marcella <burke.marcella@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>; Rementer, Nicole <rementer.nicole@epa.gov>; Bigioni, Neil <bigioni.neil@epa.gov>
Subject: Plan for processing AO docs

Hi Beth,

Following up on our conversation last week on the FOIA visualization piece, this is the data as I currently understand it! I am putting a meeting on the schedule for Monday so we can try to get our arms around this.

Current Resources (specifics of who and what they are doing below) – Total: 7.4 FTE

FEAT non-document review – Project Management/database management/indexing of electronic searches/ --- 2.95 FTE
FEAT document review – .55 FTE
AO4 Team doc review – 2.1 FTE
AO4 Team Litigation doc review – 1.8 FTE

FEAT:

1. Denise – .05 document review
    a. Doc review: as needed to help FEAT hit targets.
2. Nicole: 95% AO4 .95 non-document
    a. Doc Review: 0%
    b. 100% team management, database management
3. Chris: 65% AO4 total; .5 non-document
    a. Doc Review: .15 (250/week)
    b. Has been focused on indexing
4. Kevin: 90% AO4 total; .75 non-document
    a. Doc Review: .15 Doing 250/week
    b. Has been focused on indexing/ Track 1/ closeouts
5. Breanne: 90% AO4 total; non-document .75
    a. New hire, just getting her up to speed on doc review- Doc Review .15 (target 250/week)
6. Joan: 5% AO4 total
    a. Helped out w/ doc review when asked. .05
    b. 0 doc review- Focused on Lean work.
    c.

Rest of AO4 Team:

7. Fred: Supposed to be 50% AO4 .5 lit document review

a. Currently doing Litigation Doc review (working with Scott A. State Action Forum- in awareness review- working on non-email confirmation responses, working on year long schedules/ calendars for a bunch of AO custodians, Joan K. Sierra Club, Farm Worker's Justice with Quoc. Every Day is a deadline Fred Says)

8. Victor: Supposed to be 50% AO4 .5 litigation document review
    a. Currently doing Litigation Doc review (Sierra club CMS review for Lynn K., Clarke v. EPA for Matt S., Doing review for Joan K. too) Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP) Trying to fit in AO4 work in between.
9. Jonathan: Supposed to be 50% AO4 .3 litigation document review, .2 other AO
    a. Currently doing 60% Litigation Doc review (working on RRTF review for Seth B. and others)
    b. 40% AO stuff that's not in AO4 and not clustered stuff
10. Ryan Yaeger: Red Team/Blue Team Litigation Document Review (Matt Schwarz) & OCIR Congressional Work .5 litigation document review
11. Andy Teplitzky: 90% AO4 (Track 1 and closeouts with Kevin Hill) .9 document review (I understand we are losing Andy)
12. Ken Labe: 50% AO4 Intake for new FOIAs .5 document review
13. Loretto Tillery: 50% AO4 Intake for new FOIAs .5 document review

Speed of Review

We thought the best way to establish how quickly an average reviewer could review documents was to look at actual data taken from the relativity database on how fast reviewers do review data. We looked at three relatively recent large FOIA requests to the agency.

Ex. 5 Deliberative Process (DP)

Items to Review

1453 Total Open Requests in AO4 as of 6/18/18 including litigation.

We need to figure out how many documents we have and when they will be ready for document review.
As we know, for most of the requests the documents have not yet been pulled, so we do not know how many documents are at issue.

Currently the AO is doing a large e-discovery request (for mid-July) for all potentially responsive documents. These will all be put into one relativity space when the initial search is compelted (we are waiting for an estimate of completion time from OEI). Once those are available, A04 will do individual searches for each of the FOIA requests in date order. Once they collect the documetns responsive to the particular FOIA request, they will review those documents and apply exemptions. If the oldest case has documents that are responsive to younger cases they will be slotted into those younger requests as they are reviewed for the oldest request. So it is possible that as older requests are completed, some of the younger requests will be completed before they are actually reached in time.

In the meantime, the AO4 team is in the process of reviewing other records. As part of the Beta Pilot, the AO4 team collected records of the six departed Beachhead Team employees. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) As stated above regarding current resources, Chris, Kevin, and Breanne of the FEAT are each reviewing 250 documents per week in the Beta Pilot workspace. Andy and Kevin are doing Track 1 CMS and other documents.

Elise B. Packard
Associate General Counsel for Civil Rights and Finance
U.S. EPA Office of General Counsel, Rm. 7353C
(202) 564-7729

FIFO Outline

Ex. 5 Deliberative Process (DP)

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Message

From: Packard, Elise [Packard.Elise@epa.gov]
Sent: 7/28/2018 7:41:13 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]
Subject: Matt's FOIA package for your review
Attachments: Best Practices.wb.ebp (002) JGK 339pm 72718.docx wb 7 28 at 3 pm.docx; Draft email from Matt FOIA best practices.ebp JGK 316pm 72718.docwb 728.docx; Best practices litigation document 7 28 wb.docx; 20180726_AO4 One-Pager.docx

Hi Kevin,

Here is the packet for MAtt, still being worked on. The idea is to have a briefing paper that covers 1) Best Practices recommendations; 2) A04; 3) our litigation strategy + a communication piece. Everything is done except for the A04 piece. Monday we need to take the A04 piece (document titled 20180726....), edit it and incorporate it into the Best Practices document. I feel it Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP) So they are editing it that way (Neil already edited it some that way, but I think it needs more and he wants Denise et.al. to weigh in). Goal is to get it to MAtt Monday for a conversation with Ryan and Beth on Tuesday.

Will make sure you're totally involved since you'll be on for the Wheeler meeting on this Friday.

Hope you're having a good weekend!

Elise

From: Blake, Wendy
Sent: Saturday, July 28, 2018 3:24 PM
To: Packard, Elise; Kaminer, Joan; Bigioni, Neil
Cc: Youngblood, Charlotte
Subject: RE: Best Practices.wb.ebp.docx

Thanks everyone for your great work on these.

Elise - Attached is a clean and redlined version of the best practices/litigation document. Note that in the redline version, I deleted all comments that had been addressed. In the clean version, I removed all comments. Clean version is called "best practices litigation doc 7 28", and I added page numbers to this document.

I used the documents Joan sent at 4:22 pm to edit.

Finally, I added a few comments to the draft communication from Matt. I did not make line edits to this, but rather added comments.

I am signing off for the day, but will be working tomorrow after 11 am, so let me know if you need me to do anything more.

Wendy

Wendy L. Blake
Associate General Counsel
General Law Office
Office of General Counsel
U.S. Environmental Protection Agency
phone: (202) 564-1821
fax: (202) 564-5433

From: Packard, Elise
Sent: Friday, July 27, 2018 4:22 PM
To: Kaminer, Joan <Kaminer.Joan@epa.gov>; Bigioni, Neil <bigioni.neil@epa.gov>
Cc: Blake, Wendy <Blake.Wendy@epa.gov>; Youngblood, Charlotte <Youngblood.Charlotte@epa.gov>
Subject: RE: Best Practices.wb.ebp.docx

Thanks Joan. Wendy when you are comfortable with the docs please pass them along and I'd like to at least get these two parts to Kevin this weekend with a note that the AO4 part is coming.

Thanks all!

Elise B. Packard
Associate General Counsel for Civil Rights and Finance
U.S. EPA Office of General Counsel, Rm. 7353C
(202) 564-7729

From: Kaminer, Joan
Sent: Friday, July 27, 2018 3:43 PM
To: Bigioni, Neil <bigioni.neil@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Cc: Blake, Wendy <Blake.Wendy@epa.gov>; Youngblood, Charlotte <Youngblood.Charlotte@epa.gov>
Subject: RE: Best Practices.wb.ebp.docx

Sorry Neil, I was working off of the version sent around 2:36pm. I've moved my edits and comments to your 10:26am version. I did not verify that comments/edits from others are included in the attached.

I reattached the Draft email document for ease, though made no additional changes.

Joan G. Kaminer
Attorney-Advisor
EPA/OGC/GLO/ILPG
202-564-0334
Kaminer.joan@epa.gov

From: Bigioni, Neil
Sent: Friday, July 27, 2018 3:32 PM
To: Kaminer, Joan <Kaminer.Joan@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Cc: Blake, Wendy <Blake.Wendy@epa.gov>; Youngblood, Charlotte <Youngblood.Charlotte@epa.gov>
Subject: RE: Best Practices.wb.ebp.docx

Joan, the version of the Best Practice document you attach is an older one, not the one I revised and sent around to you at 10:26 this morning. If you have edits can you please place them on the 10:26 version that addressed comments from Elise and Wendy?

Thanks

From: Kaminer, Joan
Sent: Friday, July 27, 2018 3:25 PM
To: Bigioni, Neil <bigioni.neil@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Cc: Blake, Wendy <Blake.Wendy@epa.gov>; Youngblood, Charlotte <Youngblood.Charlotte@epa.gov>
Subject: RE: Best Practices.wb.ebp.docx

Attached please find:

1. Best Practices with Litigation Overview added w/ Elise's comments addressed
2. Draft Email with minor comments/edits

Wendy will be home in approx. an hour and will review the updated drafts.

Thank you,

Joan G. Kaminer
Attorney-Advisor
EPA/OGC/GLO/ILPG
202-564-0334
Kaminer.joan@epa.gov

From: Bigioni, Neil
Sent: Friday, July 27, 2018 2:50 PM
To: Packard, Elise <Packard.Elise@epa.gov>
Cc: Blake, Wendy <Blake.Wendy@epa.gov>; Kaminer, Joan <Kaminer.Joan@epa.gov>; Youngblood, Charlotte <Youngblood.Charlotte@epa.gov>
Subject: Re: Best Practices.wb.ebp.docx

I need to rewrite it with Denise and Nicole Monday. I might try to rewrite today or over the weekend but I do not trust myself to get nuances down.

Sent from my iPhone

On Jul 27, 2018, at 2:39 PM, Packard, Elise <Packard.Elise@epa.gov> wrote:

> This looks good, what are we doing about the AO piece?
>
> Elise B. Packard
> Associate General Counsel for Civil Rights and Finance
> U.S. EPA Office of General Counsel, Rm. 7353C

(202) 564-7729

From: Bigioni, Neil
Sent: Friday, July 27, 2018 10:26 AM
To: Packard, Elise <Packard.Elise@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Kaminer, Joan <Kaminer.Joan@epa.gov>
Subject: Best Practices.wb.ebp.docx

Ex. 5 Deliberative Process (DP)

If this makes sense to everyone let me know.

Neil

Message

From: Siciliano, CarolAnn [Siciliano.CarolAnn@epa.gov]
Sent: 7/25/2018 6:18:39 PM
To: Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Brown, Byron [brown.byron@epa.gov]
CC: Minoli, Kevin [Minoli.Kevin@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; Youngblood, Charlotte [Youngblood.Charlotte@epa.gov]; Miller, Kevin [Miller.Kevin@epa.gov]; Blake, Wendy [Blake.Wendy@epa.gov]
Subject: Fishbowl Memo: Wheeler/Lisa Jackson comparison by OGC
Attachments: Crosswalk EPA's Fishbowl Memos wth 2018 comparison.docx; Keyes Memo 4.5.14.pdf; Clarification of Communication policy 11.18.14.pdf

Ryan, Matt & Byron – Attached is a crosswalk comparing each past Fishbowl Memo to its predecessors, including a comparison of the July 25 Wheeler draft to the Lisa Jackson Memo. **Ryan,** I will call you post-haste. My number is 564-5489.

Ex. 5 AC/DP

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-5489
siciliano.carolann@epa.gov

From: Leopold, Matt (OGC)
Sent: Wednesday, July 25, 2018 11:51 AM
To: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>
Cc: Minoli, Kevin <Minoli.Kevin@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: Fwd: fish bowl

Carol Ann, can you have the attorney who did the crosswalk go meet with Ryan today?

Sent from my iPhone

Begin forwarded message:

From: "Jackson, Ryan" <jackson.ryan@epa.gov>
Date: July 25, 2018 at 11:47:21 AM EDT
To: "Leopold, Matt (OGC)" <Leopold.Matt@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Packard, Elise" <Packard.Elise@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Beach, Christopher" <beach.christopher@epa.gov>, "Brown, Byron" <brown.byron@epa.gov>
Subject: fish bowl

Attached is a draft Wheeler Fishbowl Memo.

Attached is also comparisons among similar memos from Ruckelshaus, Thomas, Reilly, and Jackson along with their actual memos.

Could OPA staff and Byron review the Wheeler memo with the usual scrub down for tone, presentation, etc?

Could OGC staff and Byron review the Wheeler memo with a legal scrub highlighting comparisons with previous memos, necessary updates, and other considerations which may change or include in the Wheeler draft?

Ultimately, I would like to present Andrew with a draft and the previous versions as early as tomorrow. Maybe the fishbowl memo could be the first memo he releases, and it could be released this week.

Thank you.

Ryan Jackson
Chief of Staff
U.S. Environmental Protection Agency
(202) 564-6999

November 18, 2014

Clarifying EPA Policy regarding Communications between Members of Scientific and Technical Federal Advisory Committees and Outside Parties

Background:

EPA recently issued guidance regarding communications between members of federal advisory committees (FACs) and parties outside of EPA including the press, Congress, and Congressional staff. This document is intended to clarify the implementation of that policy regarding FAC members who serve as Special Government Employees (SGEs) on scientific or technical FACs.

Because members of scientific and technical FACs are appointed to provide their individual, expert advice rather than to represent the views of a specific interest group, they are hired as Special Government Employees. FACs develop their independent, consensus or group advice in public meetings in accordance with the requirements of the Federal Advisory Committee Act (FACA) and EPA policy. FACA requires the EPA to establish administrative guidelines and management controls for its FACs. FACA also requires EPA to ensure that the advice of its federal advisory committees is not inappropriately influenced either by the Agency or outside parties.

SGE members of a FAC have roles and responsibilities as independent members of the scientific community, for example as professors at their universities. They have a different set of roles and responsibilities as Special Government Employees when they are doing the work of their FAC. EPA policies apply to SGE members of FACs when they are engaged in the work for which they were appointed, but not when they engage in other, non-government activities as part of their private professional lives.

EPA management of FACs

- EPA has the management responsibility for communicating with parties outside of EPA regarding the work of its federal advisory committees. This includes responding to requests regarding the scope of tasks before federal advisory committees, FACA requirements, and applicable EPA policies.
- Under FACA and consistent with the EPA Scientific Integrity Policy[1], EPA is required to ensure that the advice of all FACs, including scientific and technical FACs, is not inappropriately influenced by Agency employees or outside interests, and remains independent.
- The Agency has operational guidelines for its FACs. SGE FAC members are also subject to the EPA Scientific Integrity Policy.
- Statements, reports or recommendations of a FAC are not subject to review or approval by the agency. For example, all advisory reports of the EPA Science Advisory Board (SAB) and the Clean Air Scientific Advisory Committee (CASAC) include a disclaimer, noting that the report "has not been reviewed for approval by the agency and, hence, the contents of this report do not represent the views and policies of the EPA."

Inquiries from the Media and the General Public

- Should a FAC member receive a press or other inquiry related more generally to their scientific area of expertise or related to their participation in a FAC (other than related to deliberations), they are free to respond to the inquiry in their capacity as a private citizen.

- Individual members of FACs should not represent their views as that of the committee, panel or group in which they participate, nor should they represent their views as those of the Agency.

- The Agency's Scientific Integrity Policy also states that government employees, (which includes SGEs) are to "freely exercise their right to express their personal views provided they specify

[1] http://www.epa.gov/osa/pdfs/epa_scientific_integrity_policy_20120115.pdf

that they are not speaking on behalf of, or as a representative of, the agency, but rather in their private capacity." (SI Policy, p. 6)

- The Scientific Integrity Policy notes that agency scientists "are expected to . . . be available to answer inquiries from the news media regarding their scientific work." [SI Policy, p. 6] This expectation extends to SGE members of FACs, with the proviso that, to protect the integrity of the advisory process, SGE FAC members should not discuss the work of the FAC during the deliberative phase (i.e., when the FAC is still actively developing its advice for the Agency). During the deliberative phase, FAC members are asked to check with the appropriate DFO before speaking with the press or other outside parties regarding the activity of the FAC. This helps to ensure that record-keeping and other FACA requirements are met.

- After the FAC has sent its final advice or recommendations to EPA, FAC members may discuss the final recommendations with outside parties. Often, the Chair will be the designated spokesperson for the FAC both during the active phase of the project and when the advice has been finalized.

- When made aware of substantive press contacts to a Chair or other FAC member, the Designated Federal Officer (DFO) for the committee will notify the Office of External Affairs (OEA) for general awareness. OEA can assist reporters in obtaining relevant background information from EPA programs or regions as relevant.

- During the deliberative phase, members should refrain from characterizing study conclusions and recommendations to the press, the agency, or other members of the public. For example, the handbook for SAB members[2] advises that the "chair of the committee or panel "may respond to press inquiries to provide general background information on the issues under discussion and the committee's review process" as well as refer the requester to publically available materials including draft reports, meeting minutes, and other materials. This best practice should be followed by all EPA scientific and technical FACs.

- After the advice and recommendations of the FAC have been formally conveyed to the Agency (e.g., by means of a letter or report), the Chair of the chartered FAC or the chair of the relevant sub-committee or panel is encouraged to respond to inquiries regarding the FAC's findings and recommendations. As a courtesy, Chairs are asked to inform the DFO of all interactions with the media regarding the findings of the FAC.

Inquiries from Congressional Committees, Congressional Members or Congressional Staff

- In contrast to inquiries from members of the public or the press, inquiries from Congressional committees or staff sometimes include requests for information not limited to ongoing or planned advisory activities.
- SGE FAC members who receive Congressional requests to testify as a FAC member can respond to acknowledge receipt of the request. The DFO will notify the Office of Congressional and Intergovernmental Relations (OCIR) to coordinate the scheduling and logistics of the hearing.
    - When speaking to Congressional requestors, SGE FAC members should not discuss the work of the FAC during the deliberative phase (i.e., when the FAC is still actively developing its advice for the Agency).

[2] http://yosemite.epa.gov/sab/sabproduct.nsf/WebCASAC/Serving%20on%20the%20EPA%20Science%20Advisory%20Board:%20A%20Handbook%20for%20Members%20and%20Consultants/$File/Serving%20on%20the%20EPA%20Science%20Advisory%20Board%20SABSO-12-001.pdf

- After the FAC has sent its final advice or recommendations to EPA, SGE FAC members may discuss the final recommendations with Congressional requestors. Often, the Chair will be the designated spokesperson for the FAC, but FAC members may discuss this information so long as they reflect the views of the FAC, not the views of the Agency.

- SAB members who receive Congressional requests pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA) (e.g., requests to change or supplement charge questions or to convene additional SAB reviews or panels) should acknowledge receipt of the request and indicate that EPA will provide a response. The request should be forwarded to the appropriate DFO. Decisions on who and how best to respond to these requests will be made by EPA on a case by case basis. Congressional requests to SAB members regarding additional scientific issues or charge questions with respect to the work of the SAB will be evaluated by the agency in light of their relationship to ongoing or planned advisory activities and available resources.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

April 4, 2014

OFFICE OF THE
ADMINISTRATOR

MEMORANDUM

SUBJECT: EPA Policy Regarding Communication Between Members of Federal Advisory Committee Act Committees and Parties Outside of the EPA

FROM: Gwendolyn Keyes Fleming
Chief of Staff

TO: Christopher Zarba, Director
Office of the Science Advisory Board

Dr. David Allen, Chairman
Science Advisory Board

Thank you for your request for clarity on policies relating to communications from outside parties that have been directed to members of the United States Environmental Protection Agency's (the EPA's) Federal Advisory Committee Act (FACA) committees, in particular the Science Advisory Board (SAB). These communications have asked questions about FACA committee work, to invited members to Congressional hearings, and provided input into the scope of on-going SAB efforts. While your inquiry may have been the result of recent events, we also recognize that explaining the agency's existing guidance on this issue (which is attached to this memorandum) will benefit other FACA committee members who may be faced with similar challenges in the future. I have asked several members of our team to look into this matter. After an internal review of how such communications were historically addressed and analysis of the relevant legal provisions, the Agency will be re-affirming existing policy on such communications for FACA members and other Agency employees.

To maintain the scientific integrity of SAB and other FACA committees, and to ensure compliance with relevant laws, regulations and ethical obligations, it is important that unsolicited contacts from outside entities be appropriately managed by referring them to the Designated Federal Official (DFO) for the FACA committees who will then forward the information to the appropriate agency representatives for response. Committee members themselves and the FACA Committees as a whole, should refrain from directly responding to these external requests related to their efforts to advise the agency and should adhere to the policies governing formal and informal outside communications. This is consistent not only with the policies currently utilized by other programs, offices, and committees across the Agency, but also is consistent with previous policies issued under previous Administrations.

Internet Address (URL) • http://www.epa.gov
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The Agency places tremendous value on the work of the SAB and other FACA committees, and we want to ensure that we provide the necessary information and guidance to enable the most efficient continuation of that work. In furtherance of that mutual goal and in response to your request, I am attaching to this memorandum a document that outlines the appropriate processes for communications that may be received by FACA committee members. We look forward to continuing to have open lines of communication with all of our committees, their members and the public in order to provide the best product for the citizens we serve. If you have any questions regarding this policy, please do not hesitate to contact me.

Attachment

EPA Policy Regarding Communication Between Members of Federal Advisory Committee Act Committees and Parties Outside of the EPA

Background

Federal Advisory Committee Act Committees

Section 8 of FACA requires EPA to establish management controls that are applicable to all EPA federal advisory committees. These management controls include the following requirements:

- The Administrator is required to provide uniform administrative guidelines and management control for EPA's advisory committees, FACA §8(a); and
- The Administrator is required to appoint a Committee Management Officer, whose duties include exercising control and supervision over the Agency's advisory committees, FACA §8(b).

As part of EPA's responsibility to provide administrative guidelines to members of EPA's FACA committees, the attached guidance sets out EPA's policy regarding communication between members of FACA committees and parties outside of the EPA.

In addition to FACA, the operations of certain committees are subject to additional provisions of law specific to those committees. For example, EPA's Science Advisory Board (SAB) is subject to the Environmental Research, Development, and Demonstration Act, 42 U.S.C. § 4365, which, among other things, specifies the SAB's function, its number of members and the members' compensation. Like any FACA Committee, however, the SAB is established by the EPA Administrator for the purpose of obtaining collective advice for the Agency. (The EPA has been working with the relevant Congressional committees to address some of the novel provisions of that law, and looks forward to continuing that work. As those discussions yield a suggested path or resolution, EPA will be sure to update staff, the Chair and other members of the SAB.)

Federal Advisory Committee Act Committee Members

Members of FACA committees are appointed as representatives, Special Government Employees (SGEs), or Regular Government Employees (RGEs). The type of appointment has implications for the application of ethics rules and interactions with outside parties. Representatives are not subject to federal ethics rules and are expected and encouraged to discuss their work on the committee with, and get input from, the group they represent. SGEs, on the other hand, are subject to federal ethics rules and are expected to provide advice following group discussion based on their own individual expertise. RGEs are also subject to federal ethics rules and provide the views of their agency.

As stated above, some members of chartered FACA committees, subcommittees, ad hoc committees, panels, and work groups, serve as Special Government Employees. It is important to understand that SGEs are government employees. As defined in 18 U.S.C. § 202, an SGE is "an officer or employee . . .

who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation," for not more than 130 days during any period of 365 consecutive days.

The Office of Government Ethics, which establishes the standards of conduct for interactions between SGEs and federal agencies throughout the Executive Branch, has determined that SGEs are subject to the agency's supervision and operational control when carrying out the duties they are retained, designated, appointed, or employed to perform. As government employees, SGEs are subject to important federal ethics laws and regulations. For example, when acting in a personal capacity, FACA committee SGE members need to be careful not to use nonpublic information or represent their views as that of the committee, panel, or group in which they participate. To do so could violate ethics laws and regulations.

Independence of Federal Advisory Committee Act Committees

A key requirement of FACA is that each federal advisory committee is to provide "independent" advice. As stated in the Act, agencies are to "assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment" (FACA § 5(b)(3). Thus, under FACA, while the advice a FACA committee develops is independent of the agency, the committee itself is still subject to the management and control of the agency. In addition, SGE members of EPA's FACA committees are covered by the EPA's Scientific Integrity Policy. That policy, among other things, reaffirms the expectation that all Agency employees, including scientists, managers, and political appointees, regardless of grade level, position, or duties, will ensure that the Agency's scientific work is of the highest quality, free from political interference or personal motivations. While this policy guidance explains that EPA bears the management responsibility for communicating with outside entities regarding the work of its FACA committees, the EPA is committed to fulfilling that responsibility in a manner that preserves the independence and scientific integrity of its FACA committee members.

Policy Guidance

EPA Policy Regarding Communication Between Members of Federal Advisory Committee Act Committees and Parties Outside of the EPA

A FACA committee member's external communications are guided by EPA policies and procedures, including procedures for intergovernmental and Congressional contacts. Very often, these policies require the committee member to refrain from responding in an individual capacity and instead consult and collaborate with their committee members or others before providing an official response on behalf of the committee.

Formal Communications

Each FACA committee should have policies and practices in place for communicating the formal findings and actions of the committee to the Administrator. These policies and practices vary by FACA committee and are not the subject of this memorandum.

Informal Communications

Occasionally, an outside party may attempt to directly contact committees or committee members. As discussed above, a representative member may obtain input from the group the person represents. If a representative member receives a request from a source that they do not represent or if an SGE receives a request relating to the SGE's employment from a non-EPA source (such as a member of the press, a trade association or other non-governmental organization, or members of Congress or their staff), the FACA member should refer that request to the committee's Designated Federal Official (DFO). The DFO will consult with the appropriate office(s) within the agency and then, depending on the nature of the inquiry, the DFO will either respond to the request or will forward it to the appropriate office within the Agency for response. Specifically, if a FACA committee member receives a request relating to the committee's work from members of Congress or their staff, or Congressional Committees, the member should notify the DFO, who will refer the request to the EPA Office of Congressional and Intergovernmental Relations (OCIR). OCIR will determine the agency's response to the inquiry, after consulting with the relevant program office and the DFO. Similarly, the DFO would refer press inquiries to the Office of External Affairs, who will determine the agency's response to that type of inquiry.

Conclusion

Given the number of currently operating FACAs and varied work they are undertaking on behalf of the Agency, EPA is clarifying these procedures in an attempt to best respond the outside inquiries while also allowing committee members to focus on the important work at hand.

Message

From: Grantham, Nancy [Grantham.Nancy@epa.gov]
Sent: 7/25/2018 4:09:06 PM
To: Packard, Elise [Packard.Elise@epa.gov]; Siciliano, CarolAnn [Siciliano.CarolAnn@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]
Subject: FW: Previous transparency memos
Attachments: Charts of Fishbowl Memo Differences.docx; Crosswalk EPA's Fishbowl Memos wth 2017 comparison.docx; Jackson Fishbowl Memo 2009.pdf; Reilly Fishbowl Memo 1989.pdf; Ruckelshaus Fishbowl Memo 1983.pdf; Thomas Fishbowl Memo 1985.pdf

Do you have the Bob Perciasepe April 2013 Transparency memo as well? thanks ng

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

-----Original Message-----
From: Siciliano, CarolAnn
Sent: Wednesday, July 25, 2018 9:47 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Amorosi, Joanne <Amorosi.Joanne@epa.gov>; Cooper, Marian <Cooper.Marian@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: RE: Previous transparency memos

Attached are EPA's four Fishbowl Memos. In chronological order, they are: Ruckelshaus (1983), Thomas (1985), Reilly (1989) & Jackson (2009).

Administrators Browner, Whitman, Leavitt and Johnson did NOT issue Fishbowl Memos; the Agency operated under Administrator Reilly's version during those 16+ years.

Also attached are two crosswalks comparing the Fishbowl Memos to each other and to an April 2017 version prepared for Administrator Pruitt. Acting Administrator Wheeler's version appears to resemble the Jackson Memo in many significant respects. Therefore, the portion of the crosswalk studying the April 2017 draft is probably unhelpful. But the rest of the crosswalk is interesting historically.

Counseling note: Ex. 5 AC/DP

Ex. 5 AC/DP

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-5489
siciliano.carolann@epa.gov

-----Original Message-----
From: Grantham, Nancy
Sent: Wednesday, July 25, 2018 9:37 AM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Amorosi, Joanne <Amorosi.Joanne@epa.gov>; Cooper, Marian <Cooper.Marian@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>
Subject: RE: Previous transparency memos

That's what we are looking for .. can you send the compilation? Thanks ng

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

-----Original Message-----
From: Minoli, Kevin
Sent: Wednesday, July 25, 2018 9:36 AM
To: Vizian, Donna <Vizian.Donna@epa.gov>

Cc: Amorosi, Joanne <Amorosi.Joanne@epa.gov>; Cooper, Marian <Cooper.Marian@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>
Subject: Re: Previous transparency memos

Do you mean the fishbowl memos? If so, Carol Ann has a collection of those, I believe. She's also done a crosswalk between them.

Kevin S. Minoli
Principal Deputy General Counsel &
Designated Agency Ethics Official Office of General Counsel US Environmental Protection Agency Main Office Line: 202-564-8040

> On Jul 25, 2018, at 7:56 AM, Vizian, Donna <Vizian.Donna@epa.gov> wrote:
>
> GM - I am in search of transparency memos that have been issued by previous administrators. Please send along if you have them or an idea where I can find them.

Message

From: Leopold, Matt (OGC) [Leopold.Matt@epa.gov]
Sent: 7/25/2018 3:50:56 PM
To: Siciliano, CarolAnn [Siciliano.CarolAnn@epa.gov]
CC: Minoli, Kevin [Minoli.Kevin@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]
Subject: Fwd: fish bowl
Attachments: Wheeler Fishbowl Memo draft 072518 RJ.docx; ATT00001.htm; Thomas Fishbowl Memo 1985.pdf; ATT00002.htm; Charts of Fishbowl Memo Differences.docx; ATT00003.htm; Crosswalk EPA's Fishbowl Memos wth 2017 comparison.docx; ATT00004.htm; Jackson Fishbowl Memo 2009.pdf; ATT00005.htm; Reilly Fishbowl Memo 1989.pdf; ATT00006.htm; Ruckelshaus Fishbowl Memo 1983.pdf; ATT00007.htm

Importance: High
Flag: Follow up

Carol Ann, can you have the attorney who did the crosswalk go meet with Ryan today?

Sent from my iPhone

Begin forwarded message:

> **From:** "Jackson, Ryan" <jackson.ryan@epa.gov>
> **Date:** July 25, 2018 at 11:47:21 AM EDT
> **To:** "Leopold, Matt (OGC)" <Leopold.Matt@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Packard, Elise" <Packard.Elise@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Beach, Christopher" <beach.christopher@epa.gov>, "Brown, Byron" <brown.byron@epa.gov>
> **Subject: fish bowl**
>
> Attached is a draft Wheeler Fishbowl Memo.
>
> Attached is also comparisons among similar memos from Ruckelshaus, Thomas, Reilly, and Jackson along with their actual memos.
>
> Could OPA staff and Byron review the Wheeler memo with the usual scrub down for tone, presentation, etc?
>
> Could OGC staff and Byron review the Wheeler memo with a legal scrub highlighting comparisons with previous memos, necessary updates, and other considerations which may change or include in the Wheeler draft?
>
> Ultimately, I would like to present Andrew with a draft and the previous versions as early as tomorrow. Maybe the fishbowl memo could be the first memo he releases, and it could be released this week.
>
> Thank you.
>
> Ryan Jackson
> Chief of Staff
> U.S. Environmental Protection Agency
> (202) 564-6999

Message

From: Minoli, Kevin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C9C0070D651A4625AC20258369F9B050-KMINOLI]
Sent: 1/24/2018 12:30:29 AM
To: Dolph, Becky [Dolph.Becky@epa.gov]; Blake, Wendy [Blake.Wendy@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]
Subject: Fwd: NTEU Proposals for Proposed Reorg OGC/OEI
Attachments: Reorg Clarification Questions final 200.docx; ATT00001.htm

FYI

Kevin S. Minoli
Principal Deputy General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Begin forwarded message:

From: "Lynne, Diane" <Lynne.Diane@epa.gov>
Date: January 23, 2018 at 6:11:44 PM EST
To: "Patterson, Nicole" <Patterson.Nicole@epa.gov>
Cc: "Link, Adam (John)" <link.john@epa.gov>, "Margolis, Alan" <Margolis.Alan@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>
Subject: NTEU Proposals for Proposed Reorg OGC/OEI

Hi Nicole,

Below are NTEU's initial proposals concerning the proposed Reorg of OGC/OEI. Since the proposed joint meeting to address the attached questions has not been scheduled, we are including the joint meeting to address the attached questions as one of our proposals. In the likely event that the answers to these questions results in NTEU developing more proposals, we reserve the right to add additional proposals.

NTEU PROPOSALS

1. <!--[if !supportLists]--><!--[endif]-->We request a joint meeting of all FOIA attorneys (at least but not limited to FOIA Expert Assistance Team (FEAT), General Law Office (GLO)/Information Law Practice Group (ILPG), and AO/OEX) and in this meeting we request that Kevin provide answers for each of the attached questions.
2. <!--[if !supportLists]--><!--[endif]-->Based on the answers to these questions, NTEU will be providing additional proposals.

3. <!--[if !supportLists]--><!--[endif]-->Our current proposals include but are not limited to the following:
    - <!--[if !supportLists]--><!--[endif]-->Delay implementation until after the upcoming FOIA LEAN event.
    - <!--[if !supportLists]--><!--[endif]-->Request staff-level (non-management) participation by FEAT, FOIA Operations and Implementation Team (FOIT) and GLO/ILPG at the LEAN event.
    - <!--[if !supportLists]--><!--[endif]-->Delay implementation until 6 months until after the AO centralization pilot project and/or% reduction in litigation cases pending against AO.
    - <!--[if !supportLists]--><!--[endif]-->Request further clarification of counseling role between the FOIT, FEAT and ILPG and any effect on the current counseling role of the ILPG.
    - <!--[if !supportLists]--><!--[endif]-->Request that the appointed team leads of the FEAT and the FOIT should be at the assistant level to mirror the practice group structure of the other large law offices.
    - <!--[if !supportLists]--><!--[endif]-->Request look-back proposal in six months for FEAT and ILPG/GLO.
    - <!--[if !supportLists]--><!--[endif]-->Delegation of authority for administrative appeals should be reviewed for potential conflicts of interest in FOIA appeal decisions.
    - <!--[if !supportLists]--><!--[endif]-->Re-examine OCFO memo treating FOIA fee and payment by the "responsible office."
    - <!--[if !supportLists]--><!--[endif]-->Clarify in writing ILPG's current role with FEAT's proposed function of "providing legal and project management support to offices."
    - <!--[if !supportLists]--><!--[endif]-->Clarify in writing ILPG's current role with Feat's proposed function of "providing legal advice on FOIA requests received by the Agency and any effect on the current counseling role of either office."
    - <!--[if !supportLists]--><!--[endif]-->Request administrative leave for move of staff offices.
    - <!--[if !supportLists]--><!--[endif]-->Request inter-office retreat / facilitation to ensure smooth transition and cohesion of new affected offices and ILPG.

- <!--[if !supportLists]--><!--[endif]-->Request clear written communication go out to all agency client offices regarding roles and responsibilities once defined.
- <!--[if !supportLists]--><!--[endif]-->Assign a single senior leader with enough time to oversee implementation of this reorganization with bi-weekly updates to staff and to ensure continuity of implementation and effective change management.

Diane
202 566 2786

From: Lynne, Diane
Sent: Tuesday, January 16, 2018 3:11 PM
To: Patterson, Nicole <Patterson.Nicole@epa.gov>; Link, Adam (John) <link.john@epa.gov>
Cc: Minoli, Kevin <Minoli.Kevin@epa.gov>; Margolis, Alan <Margolis.Alan@epa.gov>
Subject: Proposed Reorg OGC/OEI: Request for Inclusive Meeting to Discuss Attached Questions
Importance: High

Hi Nicole,

NTEU had a meeting with our BU in the offices that will be most impacted by the proposed OGC/OEI reorganization. Although our goal was to develop proposals, it quickly became evident that the proposed reorganization raised so many questions about the way FOIA response would be handled that we felt it necessary to note those concerns. Attached are questions, issues and concerns that we would like addressed by Kevin Minoli. We are requesting a meeting this week – Wednesday or Thursday afternoon that includes FEAT,GLO/ILPG, and OEX. Since Kevin has already scheduled a meeting for 1:00 tomorrow, it would be great if we can broaden the attendance and address the attached issues.

Please let me know.

Thanks,

Diane
202 566 2786

Message

From: Minoli, Kevin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C9C0070D651A4625AC20258369F9B050-KMINOLI]
Sent: 1/22/2018 9:50:52 PM
To: Dolph, Becky [Dolph.Becky@epa.gov]; Blake, Wendy (Blake.Wendy@epa.gov) [Blake.Wendy@epa.gov]
Subject: FW: Proposed Reorg OGC/OEI: Request for Inclusive Meeting to Discuss Attached Questions
Attachments: Reorg Clarification Questions final 200.docx

Importance: High

I will need to answer these at my meetings Wednesday. Kevin

Kevin S. Minoli
Principal Deputy General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8064

From: Lynne, Diane
Sent: Tuesday, January 16, 2018 3:09 PM
To: Patterson, Nicole <Patterson.Nicole@epa.gov>; Link, Adam (John) <link.john@epa.gov>
Cc: Minoli, Kevin <Minoli.Kevin@epa.gov>; Margolis, Alan <Margolis.Alan@epa.gov>
Subject: Proposed Reorg OGC/OEI: Request for Inclusive Meeting to Discuss Attached Questions
Importance: High

Hi Nicole,

NTEU had a meeting with our BU in the offices that will be most impacted by the proposed OGC/OEI reorganization. Although our goal was to develop proposals, it quickly became evident that the proposed reorganization raised so many questions about the way FOIA response would be handled that we felt it necessary to note those concerns. Attached are questions, issues and concerns that we would like addressed by Kevin Minoli. We are requesting a meeting this week – Wednesday or Thursday afternoon that includes FEAT,GLO/ILPG, and OEX. Since Kevin has already scheduled a meeting for 1:00 tomorrow, it would be great if we can broaden the attendance and address the attached issues.

Please let me know.

Thanks,

Diane
202 566 2786

Message

From: Minoli, Kevin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C9C0070D651A4625AC20258369F9B050-KMINOLI]
Sent: 7/15/2018 1:33:48 AM
To: Walker, Denise [Walker.Denise@epa.gov]
Subject: Fwd: Draft FIFO + AO4
Attachments: Draft FIFO Outline + AO4 07132018.docx; ATT00001.htm

This is where my data came from

Kevin S. Minoli
Principal Deputy General Counsel &
Designated Agency Ethics Official
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Begin forwarded message:

From: "Packard, Elise" <Packard.Elise@epa.gov>
Date: July 13, 2018 at 4:02:10 PM EDT
To: "Minoli, Kevin" <Minoli.Kevin@epa.gov>
Subject: FW: Draft FIFO + AO4

This is for something else, but might be helpful to you?

Elise B. Packard
Associate General Counsel for Civil Rights and Finance
U.S. EPA Office of General Counsel, Rm. 7353C
(202) 564-7729

From: Walker, Denise
Sent: Friday, July 13, 2018 4:01 PM
To: Bigioni, Neil <bigioni.neil@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: Draft FIFO + AO4

OK- I added this:
Take what you want from it. Elise, I'm coming up!

Ex. 5 Deliberative Process (DP)

On July 21, 2017, in response to identified issues with FOIA processing in the AO, the Chief of Staff directed the FOIA Expert Assistance Team (FEAT) to manage all incoming FOIA requests in the AO Immediate Office (OEX), the Office of Public Affairs (OPA), the Office of Policy (OP) and the Office of Congressional and Intergovernmental Relations (OCIR) in a document titled "AO FOIA Centralization Pilot Project Description." Each of the offices had increasing numbers of FOIA requests for which they are the lead office, different levels of expertise and capacity in FOIA processing, and the assigned resources did not match the volume or importance of FOIA needs. OGC's FEAT was tasked to provide project management and oversight for all FOIAs received by the four AO offices (now called the "AO4") involved to more efficiently and effectively manage current resources.

After multiple lean events and prototype exercises, the FEAT and the AO4 team implemented the AO FOIA Centralization Pilot Project on April 31, 2018. Currently, FEAT is coordinating the centralized FOIA efforts. The AO4 offices have over 1300 FOIA requests pending.
Since implementation, the team has closed 100 requests, provided 341 interim responses, and contacted over 1100 requesters in writing.

The team completed Phases I and II of implementation and is preparing to move to Phase III. In Phase III, the AO4 plans to submit a large e-discovery request (mid-July) for all potentially responsive documents. These will all be put into one Relativity workspace when the initial search is completed. Once the search is submitted, OEI will be able to provide the team with a pre-case assessment (PCA) so that we will know how many records total are in the workspace. Once the records are loaded and available, AO4 will do individual searches for each of the FOIA requests in date order, starting with the oldest expedited request. As soon as the search is created for the oldest expedited request, the team can create review batches based on that search and assign them. The reviewers will review those documents and apply exemptions. While the reviewers are working on the oldest requests, the database manager will continue creating the specific searches for the rest of the 1400 specific requests . Because the documents are all in one workspace, if the oldest request has documents that are responsive to newer requests, they will be slotted into those newer requests as they are reviewed for the oldest request. So it is possible that as older requests are completed, some of the newer requests will be completed before they are actually reached in time. If the team was to run a separate search for each of the 1400 requests in order, the same documents would be reviewed over and over again-resulting in a higher risk of inadvertent release and inconsistent coding. Moreover, the team would need to set up hundreds of individual workspaces, the workspaces would take up much more data storage to host on EPA servers, and the review time would be extended exponentially.
Denise A. Walker
U.S. Environmental Protection Agency
Acting Assistant Director, OGC FOIA Expert Assistance Team
Washington, D.C. |7308A WJCN
Office: 202-564-6520
EPA Cell: 202-816-9872

Have a FOIA question? Try here first!

From: Bigioni, Neil
Sent: Thursday, July 12, 2018 12:21 PM
To: Walker, Denise <Walker.Denise@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>
Subject: RE: Plan for processing AO docs

I think too specific (names etc.), though I think maybe the items to review section can form the basis of an AO4 Appendix.

From: Walker, Denise
Sent: Thursday, July 12, 2018 11:11 AM
To: Blake, Wendy <Blake.Wendy@epa.gov>; Bigioni, Neil <bigioni.neil@epa.gov>
Subject: Fwd: Plan for processing AO docs

Does this description at the very bottom from Elise below work for our FIFO memo?? She drafted with our input.

Sent from my iPhone

Begin forwarded message:

From: "Bigioni, Neil" <bigioni.neil@epa.gov>
Date: July 12, 2018 at 11:07:25 AM EDT
To: "Packard, Elise" <Packard.Elise@epa.gov>
Cc: "Blake, Wendy" <Blake.Wendy@epa.gov>, "Walker, Denise" <Walker.Denise@epa.gov>
Subject: FW: Plan for processing AO docs

Elise,

Byron has scheduled a meeting (I sent this to you) on the FOIA process. We think his main focus will be litigation plus the type of workload visualization data we previously shared with Beth, but which I do not think has made much forward progress in the last week.

From: Bigioni, Neil
Sent: Monday, July 2, 2018 8:11 AM
To: Packard, Elise <Packard.Elise@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>
Cc: Burke, Marcella <burke.marcella@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>; Rementer, Nicole <rementer.nicole@epa.gov>
Subject: RE: Plan for processing AO docs

I asked Region 3 to pull Relativity document review speeds for our Freedom WV spill mega-FOIA review. Our document review speeds were much slower than GKM, Bristol and Flint.

Ex. 5 Deliberative Process (DP)

From: Packard, Elise
Sent: Friday, June 29, 2018 5:33 PM
To: White, Elizabeth <white.elizabeth@epa.gov>
Cc: Burke, Marcella <burke.marcella@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>; Rementer, Nicole <rementer.nicole@epa.gov>; Bigioni, Neil <bigioni.neil@epa.gov>
Subject: Plan for processing AO docs

Hi Beth,

Following up on our conversation last week on the FOIA visualization piece, this is the data as I currently understand it! I am putting a meeting on the schedule for Monday so we can try to get our arms around this.

Current Resources (specifics of who and what they are doing below) – Total: 7.4 FTE

FEAT non-document review – Project Management/database management/indexing of electronic searches/ --- 2.95 FTE

FEAT document review – .55 FTE
AO4 Team doc review – 2.1 FTE
AO4 Team Litigation doc review – 1.8 FTE

FEAT:

1. Denise – .05 document review
    a. Doc review: as needed to help FEAT hit targets.
2. Nicole: 95% AO4 .95 non-document
    a. Doc Review: 0%
    b. 100% team management, database management
3. Chris: 65% AO4 total; .5 non-document
    a. Doc Review: .15 (250/week)
    b. Has been focused on indexing
4. Kevin: 90% AO4 total; .75 non-document
    a. Doc Review: .15 Doing 250/week
    b. Has been focused on indexing/ Track 1/ closeouts
5. Breanne: 90% AO4 total; non-document .75
    a. New hire, just getting her up to speed on doc review- Doc Review .15 (target 250/week)
6. Joan: 5% AO4 total
    a. Helped out w/ doc review when asked. .05
    b. 0 doc review- Focused on Lean work.
    c.

Rest of AO4 Team:

7. Fred: Supposed to be 50% AO4 .5 lit document review
    a. Currently doing Litigation Doc review (working with Scott A. State Action Forum- in awareness review- working on non-email confirmation responses, working on year long schedules/ calendars for a bunch of AO custodians, Joan K. Sierra Club, Farm Worker's Justice with Quoc. Every Day is a deadline Fred Says)
8. Victor: Supposed to be 50% AO4 .5 litigation document review
    a. Currently doing Litigation Doc review (Sierra club CMS review for Lynn K., Clarke v. EPA for Matt S., Doing review for Joan K. too) Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP) Trying to fit in AO4 work in between.
9. Jonathan: Supposed to be 50% AO4 .3 litigation document review, .2 other AO
    a. Currently doing 60% Litigation Doc review (working on RRTF review for Seth B. and others)
    b. 40% AO stuff that's not in AO4 and not clustered stuff
10. Ryan Yaeger: Red Team/Blue Team Litigation Document Review (Matt Schwarz) & OCIR Congressional Work .5 litigation document review
11. Andy Teplitzky: 90% AO4 (Track 1 and closeouts with Kevin Hill) .9 document review (I understand we are losing Andy)
12. Ken Labe: 50% AO4 Intake for new FOIAs .5 document review
13. Loretto Tillery: 50% AO4 Intake for new FOIAs .5 document review

Speed of Review

We thought the best way to establish how quickly an average reviewer could review documents was to look at actual data taken from the relativity database on how fast reviewers do review data. We looked at three relatively recent large FOIA requests to the agency.

Ex. 5 Deliberative Process (DP)

Items to Review

1453 Total Open Requests in AO4 as of 6/18/18 including litigation.

We need to figure out how many documents we have and when they will be ready for document review.
As we know, for most of the requests the documents have not yet been pulled, so we do not know how many documents are at issue.

Currently the AO is doing a large e-discovery request (for mid-July) for all potentially responsive documents. These will all be put into one relativity space when the initial search is compelted (we are waiting for an estimate of completion time from OEI). Once those are available, A04 will do individual searches for each of the FOIA requests in date order. Once they collect the documetns responsive to the particular FOIA request, they will review those documents and apply exemptions. If the oldest case has documents that are responsive to younger cases they will be slotted into those younger requests as they are reviewed for the oldest request. So it is possible that as older requests are completed, some of the younger requests will be completed before they are actually reached in time.

In the meantime, the AO4 team is in the process of reviewing other records. As part of the Beta Pilot, the AO4 team collected records of the six departed Beachhead Team employees. There are currently roughly 15,000 documents in the Beta Pilot workspace that need to be reviewed. As stated above regarding current resources, Chris, Kevin, and Breanne of the FEAT are each reviewing 250 documents per week in the Beta Pilot workspace. Andy and Kevin are doing Track 1 CMS and other documents.

Elise B. Packard
Associate General Counsel for Civil Rights and Finance
U.S. EPA Office of General Counsel, Rm. 7353C
(202) 564-7729

Message

From: Minoli, Kevin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C9C0070D651A4625AC20258369F9B050-KMINOLI]
Sent: 7/15/2018 12:35:28 AM
To: Walker, Denise [Walker.Denise@epa.gov]
Subject: DRAFT Letter to RM Cummings Re FEAT.docx
Attachments: DRAFT Letter to RM Cummings Re FEAT.docx; ATT00001.txt

Thank you! Kevin

Message

From: Minoli, Kevin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C9C0070D651A4625AC20258369F9B050-KMINOLI]
Sent: 8/13/2018 5:34:49 PM
To: Monson, Mahri [Monson.Mahri@epa.gov]
Subject: FW: Draft FOIA Memo
Attachments: Draft FOIA Memo - 08.10.18.GLO NFO Clean to Circulate.docx

Please add this to my to do list with a due date of tomorrow and put it in my binder for tonight.

Kevin S. Minoli
Principal Deputy General Counsel
& Designated Agency Ethics Official
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8064

From: Youngblood, Charlotte
Sent: Friday, August 10, 2018 5:07 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Cc: Walker, Denise <Walker.Denise@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Monson, Mahri <Monson.Mahri@epa.gov>; Mills, Derek <Mills.Derek@epa.gov>
Subject: Draft FOIA Memo

Kevin,

Please find the updated FOIA memo attached. Denise and I incorporated Matt's changes, added the "key points" section up front (which is contemplated as an introductory email message, but could also be incorporated into the text of the memo), and did some additional editing. Ex. 5 AC/DP

Ex. 5 AC/DP

I look forward to your comments/edits. We can incorporate them Monday/Tuesday, and still aim to submit to Matt on Tuesday, if that works with your schedule.

Thanks,

Charlotte Youngblood
Deputy Associate General Counsel
General Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-0283
youngblood.charlotte@epa.gov

Message

From: Minoli, Kevin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C9C0070D651A4625AC20258369F9B050-KMINOLI]
Sent: 7/26/2018 4:19:46 PM
To: Byrne, Jim (OGC) [Jim.Byrne@va.gov]
Subject: RE: Response to Hill
Attachments: Letter to Ranking Member Elijah E. Cummings Regarding EPA's FOIA Expert Assistance Team.Final.pdf

Hi Jim- Attached is the letter I signed to Ranking Member Cummings on 7/15/18. A lot of the letter is specific to a Team we have here at EPA, but there are things that I say in here that may be helpful. I am happy to set up a time to talk about the letter and what you are facing if you think that would be helpful. I could do that from 4:30-7:00 today or tomorrow morning between 10:30-11:30. Thanks, Kevin

Kevin S. Minoli
Principal Deputy General Counsel
& Designated Agency Ethics Official
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8064

From: Byrne, Jim (OGC) [mailto:Jim.Byrne@va.gov]
Sent: Thursday, July 26, 2018 11:43 AM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Subject: Response to Hill

Kevin,
Please forgive the informality of this email. I tried to call earlier. Dan Epstein, White House Associate Counsel, suggested that you had a model response to a Congressional oversight letter regarding alleged politicization of an agency's FOIA process. May I kindly ask that you share that document with me so that we can ensure consistency across the Administration? Please call me if you have any questions. Thank you for your assistance.
Regards,
Jim

James M. Byrne
General Counsel
U.S. Department of Veterans Affairs
(202) 461-4995

Message

From: Boxton, Troy [Boxton.Troy@epa.gov]
Sent: 2/15/2018 4:55:34 PM
To: Monson, Mahri [Monson.Mahri@epa.gov]
CC: Stanton, Rachel [stanton.rachel@epa.gov]; Walsh, Ed [Walsh.Ed@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; Dolph, Becky [Dolph.Becky@epa.gov]
Subject: RE: Functional statement change--NOT substantive
Attachments: Level I Determination for OEI's LAD to OGC Proposed Reorganization

Greetings Mahri,

It was a pleasure speaking with you today. As I mentioned this proposed reorg is a level 1 reorg, which means this is currently under congressional review. Since we do not control congress review time this could take a little longer than our normal review period.

I will continue to reach out to our congressional liaison regarding the status of this reorg. If OGC want to make changes to the functional statement now we ask that you submit now before congress provide make decision regarding this reorg. However, if the submittal is provided after congress decision then congress would need to review the package again, which could delay the implementation of this reorg.

I have attached the level determination email I sent to Becky on December 18th.

Troy Boxton, MBA
Management Analyst
Office of Administration & Resource Management
1200 Pennsylvania Ave., N.W.
Room 1419 WJC East MC-3600A
Washington, D.C. 20460
Office: (202) 564-7419
Fax: (202) 564-1928
boxton.troy@epa.gov

From: Monson, Mahri
Sent: Thursday, February 15, 2018 11:18 AM
To: Boxton, Troy <Boxton.Troy@epa.gov>
Subject: FW: Functional statement change--NOT substantive

From: Monson, Mahri
Sent: Wednesday, February 14, 2018 5:59 PM
To: Stanton, Rachel <stanton.rachel@epa.gov>
Subject: RE: Functional statement change--NOT substantive

Here it is. Let me know what I can do and what is next! Thanks again. -Mahri

FUNCTIONS: Under the supervision of the Associate General Counsel and as described in more detail below, this unit serves as the National Program Manager for FOIA and provides legal counsel and

programmatic direction on issues pertaining to FOIA requests received across the Agency. The unit is broken into two teams: the FOIA Operations and Implementation Team and the FOIA Expert Assistance Team. Utilizing an extraordinary breadth of FOIA knowledge and experience, together with in-depth organizational and external awareness, the teams provide advice and guidance to the highest echelons of management within the Agency

The FOIA Operations and Implementation Team leads the Agency's FOIA program by:

- Developing and overseeing the implementation of Agency policies, procedures and guidance to ensure the timely and appropriate release of information under FOIA; and by
- Serving as the Agency FOIA Officer and working closely with all EPA offices to implement FOIA responsibilities Agency-wide.

The FOIA Expert Assistance Team supports the Agency's FOIA program by:

- Providing ~~legal and strategic~~ support to the FOIA Operations and Implementation Team;
- Providing legal and project management support to offices across the agency on the most complex and challenging FOIA requests; and by
- Providing legal advice on FOIA requests received by the Agency, in conjunction and coordination with the OGC General Law Office.

Mahri Monson
Operational Special Assistant
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-2657
Pronouns: She/Her/Hers

I am an EPA LGBTQ+ Ally. Learn more and take the pledge here.

Help eliminate environmental violations - report tips and complaints here.

From: Stanton, Rachel
Sent: Wednesday, February 14, 2018 3:16 PM
To: Monson, Mahri <Monson.Mahri@epa.gov>
Subject: RE: Functional statement change--NOT substantive

Hey, if the fun statement is already written, send it to me and I'll try to get it out and on the intranet.

Ya, I was surprised that there were outstanding position descriptions – we usually tell offices to update those as the first step in a reorg.

Let me know if I can answer any more questions.

From: Monson, Mahri
Sent: Wednesday, February 14, 2018 2:29 PM
To: Stanton, Rachel <stanton.rachel@epa.gov>
Subject: RE: Functional statement change--NOT substantive

It is apparently just minor wording rearrangements to make the meaning more clear, but not actually changing the meaning. So just let us know if you think we should change it now or after.

Thank you again!
Mahri

Mahri Monson
Operational Special Assistant
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-2657
Pronouns: She/Her/Hers

I am an EPA LGBTQ+ Ally. Learn more and take the pledge here.

Help eliminate environmental violations - report tips and complaints here.

From: Monson, Mahri
Sent: Wednesday, February 14, 2018 2:24 PM
To: Stanton, Rachel <stanton.rachel@epa.gov>
Subject: RE: Functional statement change--NOT substantive

Just found out the functional statement change Kevin wants is NOT substantive. Can you please advise how to proceed?

Thanks again for all your help!
Mahri

Mahri Monson
Operational Special Assistant
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-2657
Pronouns: She/Her/Hers

I am an EPA LGBTQ+ Ally. Learn more and take the pledge here.

Help eliminate environmental violations - report tips and complaints here.

From: Monson, Mahri
Sent: Wednesday, February 14, 2018 1:21 PM
To: Stanton, Rachel <stanton.rachel@epa.gov>
Subject: FW: FORMAL NOTICE - OGC & OEI Reorganization

Mahri Monson
Operational Special Assistant
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-2657
Pronouns: She/Her/Hers

I am an EPA LGBTQ+ Ally. Learn more and take the pledge here.

Help eliminate environmental violations - report tips and complaints here.

From: Minoli, Kevin
Sent: Wednesday, February 14, 2018 1:21 PM
To: Monson, Mahri <Monson.Mahri@epa.gov>
Subject: FW: FORMAL NOTICE - OGC & OEI Reorganization

It is in the first attachment.

Kevin S. Minoli
Principal Deputy General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8064

From: Patterson, Nicole
Sent: Wednesday, December 20, 2017 3:51 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: FW: FORMAL NOTICE - OGC & OEI Reorganization

FYI

Nicole Patterson
Labor and Employee Relations
Office: 202-564-4839

From: Patterson, Nicole
Sent: Wednesday, December 20, 2017 9:56 AM
To: James, Nathaniel <james.nathaniel@epa.gov>; Lynne, Diane <Lynne.Diane@epa.gov>
Cc: Johnson, StacyD <Johnson.StacyD@epa.gov>
Subject: FORMAL NOTICE - OGC & OEI Reorganization

Good morning, Nate and Diane:

Per my email and voicemail last week, this email serves as official notice of a reorganization impacting the Office of the General Counsel (OGC) and Office of Environmental Information (OEI). Please see the short summary below and the attached files which constitute the complete reorganization package.

This reorganization relocates the FOIA staff from the FOIA, Libraries & Accessibility Division of the Office of Enterprise Information Programs within OEI to the OGC. The purpose of this change is to co-locate the FOIA program staff and the FOIA Expert Assistance Team (FEAT) staff under a single office. This reorganization will significantly increase the effectiveness and visibility of the National FOIA Program, by bringing together the team setting FOIA policies and procedures for the agency with the legal experts in FOIA processing at EPA. The reorganization will also increase collaboration, improve the efficiency of EPA's programmatic FOIA work and delivery of critical legal advice, and provide agency stakeholders with a clear understanding of which office to turn to when they need FOIA-related assistance.

We have scheduled a courtesy briefing for **Thursday, December 28, 2017 at 2:30 PM**, and meeting invites have been sent. Please respond to this reorganization package by the deadlines in the applicable CBA, and let me know if you have any questions.

Thank you,
Nicole

Nicole M. Patterson
Attorney-Adviser
Labor and Employee Relations Division
Office of Human Resources
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
WJC North – Room 6313E
Washington, DC 20460
Mail Code 3602A
☎: 202-564-4839 FAX: 202-564-2837 ✉: Patterson.Nicole@epa.gov
Note: This e-mail is intended for the exclusive use of the recipient(s) named above, and must not be disseminated or copied to other non-authorized persons. If you have received this e-mail in error, please contact the sender immediately. Thank you.

Message

From: Boxton, Troy [Boxton.Troy@epa.gov]
Sent: 12/18/2017 1:10:45 PM
To: Dolph, Becky [Dolph.Becky@epa.gov]
CC: Stanton, Rachel [stanton.rachel@epa.gov]; Young, Debbie [young.debbie@epa.gov]
Subject: Level I Determination for OEI's LAD to OGC Proposed Reorganization
Attachments: FEAT-FOIA Org Code.OGC.12.14.17.xlsx; OEI org charts (OEI-part of FOIA to OGC Reorg).xlsx; Signed.pdf

Greetings Becky,

The EPA Reorganization Program had the opportunity to review the proposed reorganization for OEI's LAD to OGC. We determined that the package is a Level I reorganization. The OHR's Workforce Planning Branch (WPB), Reorganization Program will shepherd this proposed reorganization throughout the review process in a timely manner. The following is a list of the required steps involved in Level I reorganizations:

1. The Reorganization Program sends proposed reorganization package to Executive Resources Division and the Office of the Chief Financial Officer for congressional review. (Approx. 10 Days) However, this could take a longer due to congressional review is warranted

2. The Reorganization Program sends proposed reorganization package to the Labor and Employee Relations (LER) for Union review. (Approx. 10 Days for Stakeholders) (Approx. 15 business days for Unions)
After the union review we will request for signature of the Decision Memorandum

3. Steps one and two are sent for review comment simultaneously

4. The Reorganization Program sends proposed reorganization package to the Office of Human Resources Information Technology (IT) Division to review Excel Spreadsheet, and establish organizational codes as required. (Approx. 15 Days)

5. Reorganization codes are established by IT Division incorporating an effective date of the codes based on People plus (PPL/HRLoB) pay period.

6. Position Descriptions are updated by the applicable Shared Service Center HR Specialist and SF-50/SF-52 forms are issued.

7. The proposed reorganization becomes effective when PPL/HRLoB Time/Labor changes are completed after the SSC have completed all administrative actions.

Estimate Time to Complete: 2 – 3 Months or sooner

If you have any questions about EPA's Reorganization process or would like to share other comments/concerns, please do not hesitate to contact Troy Boxton or Rachel Stanton by return e-mail or telephone at (202) 564-7419 or 202-564-8139.

Thank you.

EPA ORGANIZATION CODE CHANGE REQUEST FORM

(11/2015 Edition)

Proposed Effective Date:

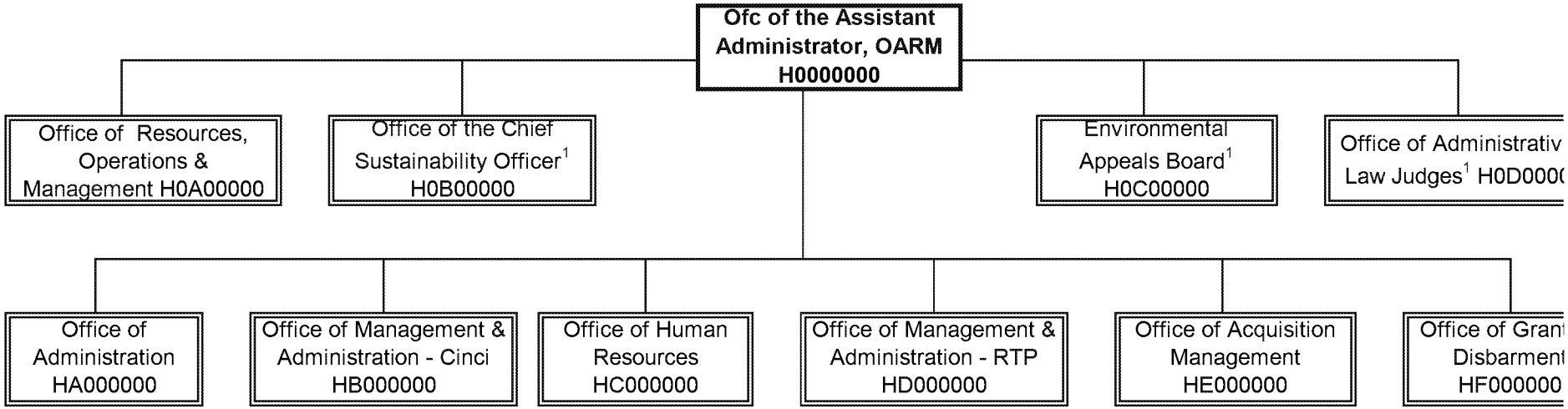
REGION/AASHIP: OEI and OGC

Instructions: Please complete the Organization code change form and forward it as part of the final reorganization package (without the examples). All requested changes will be reviewed by the agency's reorganization team for conformity with system code change procedures. Failure to provide this information may delay processing of this request. There must be **one line** for each Type of Change. Deleted organizations will be inactivated and the Current Organization Name and

CURRENT ORGANIZATION NAME[1]	CURRENT ORG CODE[2]	TYPE OF CHANGE (click on the cell drop down for change type)	NEW ORGANIZATION NAME[1]	NEW ORG CODE[2] (optional)	New Org CITY	New Org STATE
FOIA Expert Asistance Team (FEAT) Office	CK000000	**Rename Org**	**National FOIA Office**			
FOIA, Libraries & Accessibility Division	GAE00000	**Rename Org**	**Libraries & Accessibility Division**			
1 Organization Name is a 37 characters field. If the new description is longer than that it will be abbreviated.						
2 Organization Code is a 8 character field in Alpha/Numberic format.						
RED - Delete Org, BLUE - Rename Org, GREEN - New Org						

Delete Org
New Org
Rename Org

Current Organizational Structure
Office of Administration & Resources Management
(Showing office-level-organizations)



[1] This organization has no subordinate organizational structure and does not appear among the charts on the subsequent pages

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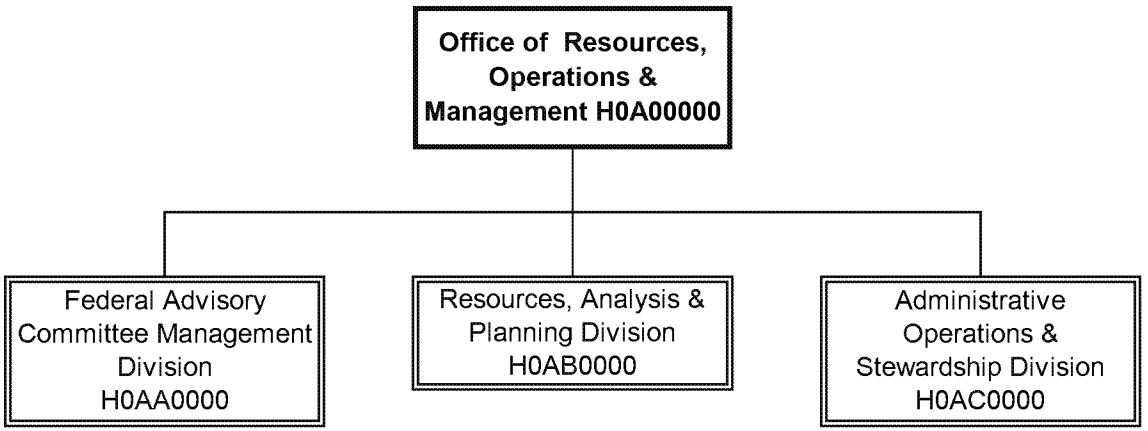
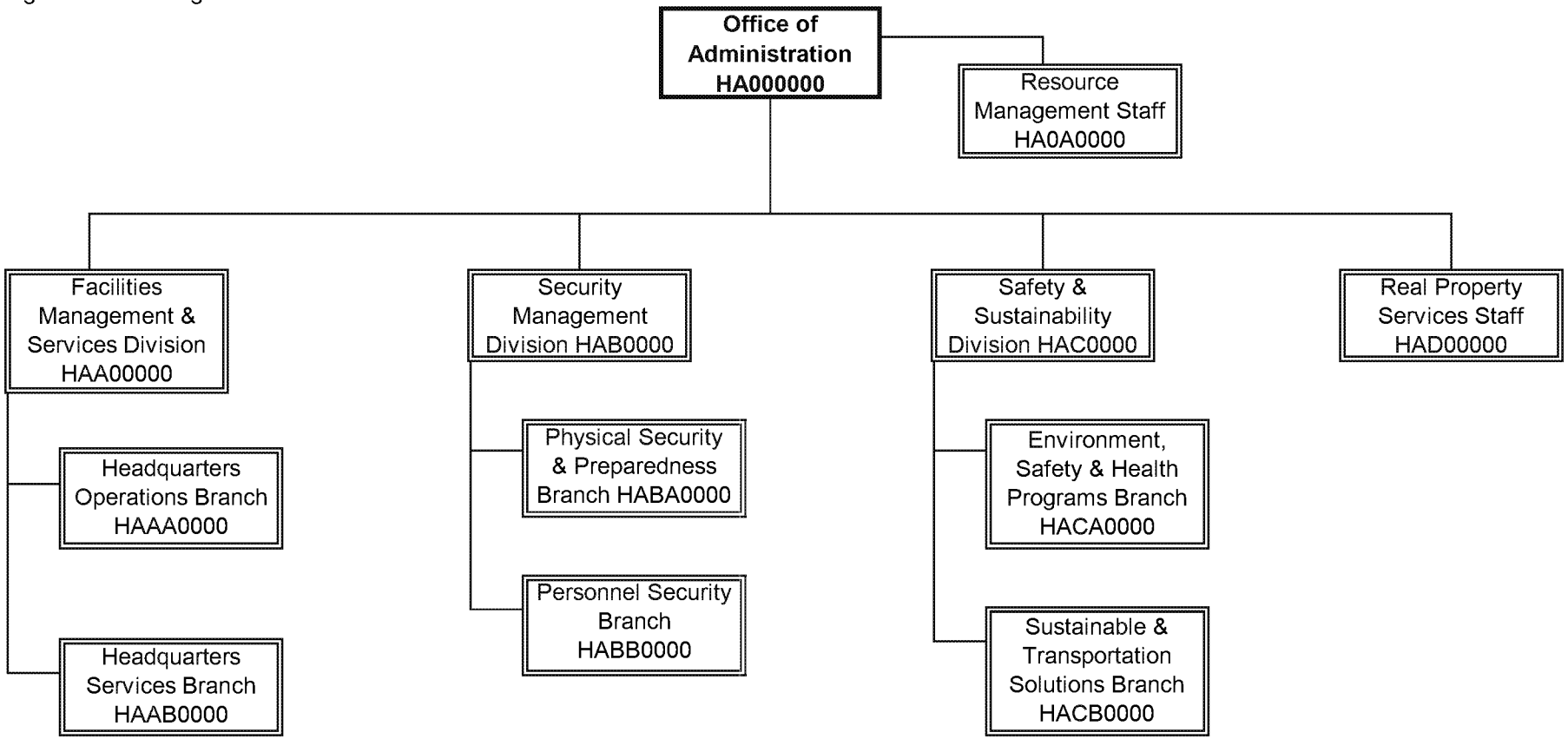
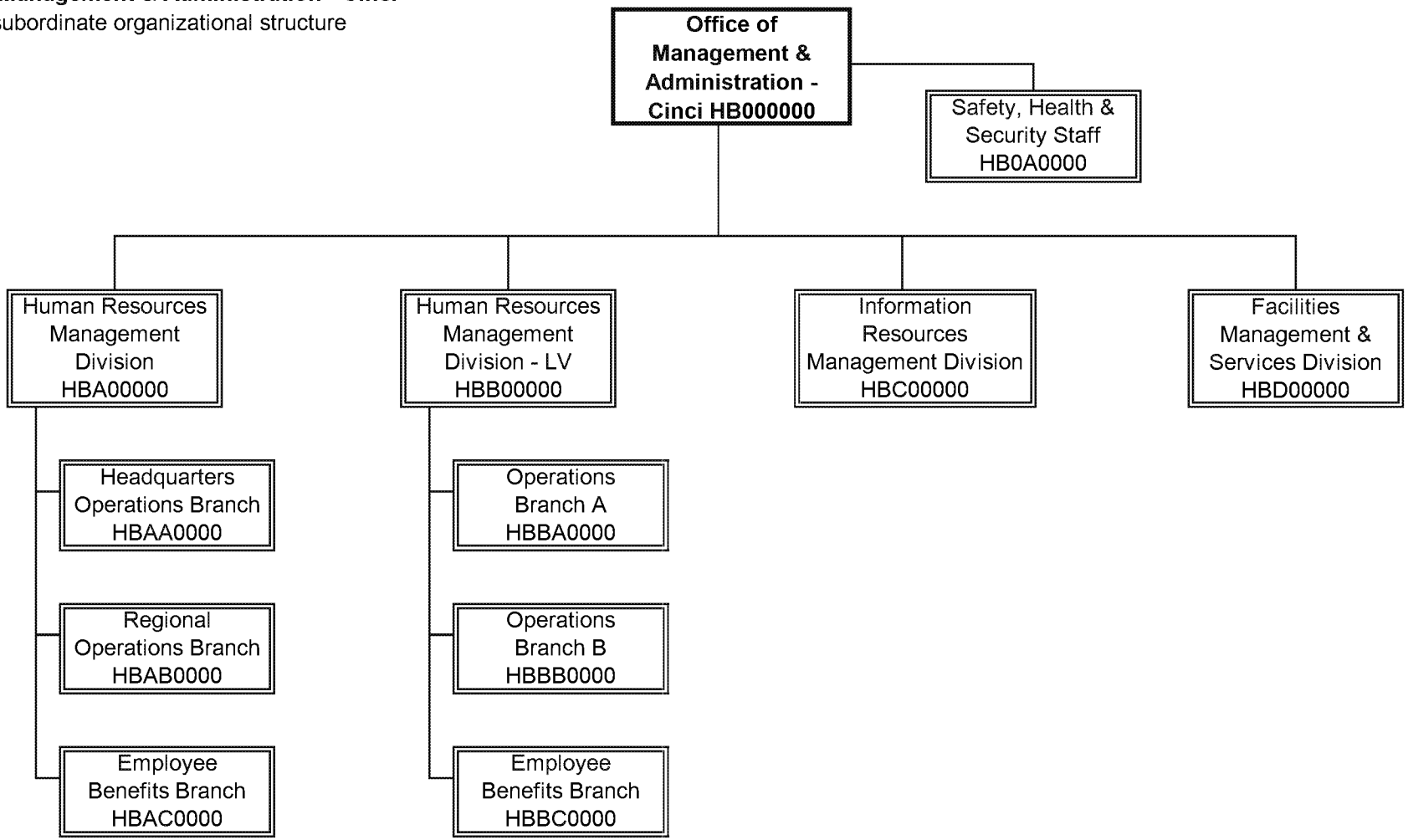
Current Organizational Structure
Office of Administration & Resources Management
Office of Resources, Opeations & Management
Showing subordinate organizational structure



Current Organizational Structure
Office of Administration & Resources Management
Office of Administration
Showing subordinate organizational structure

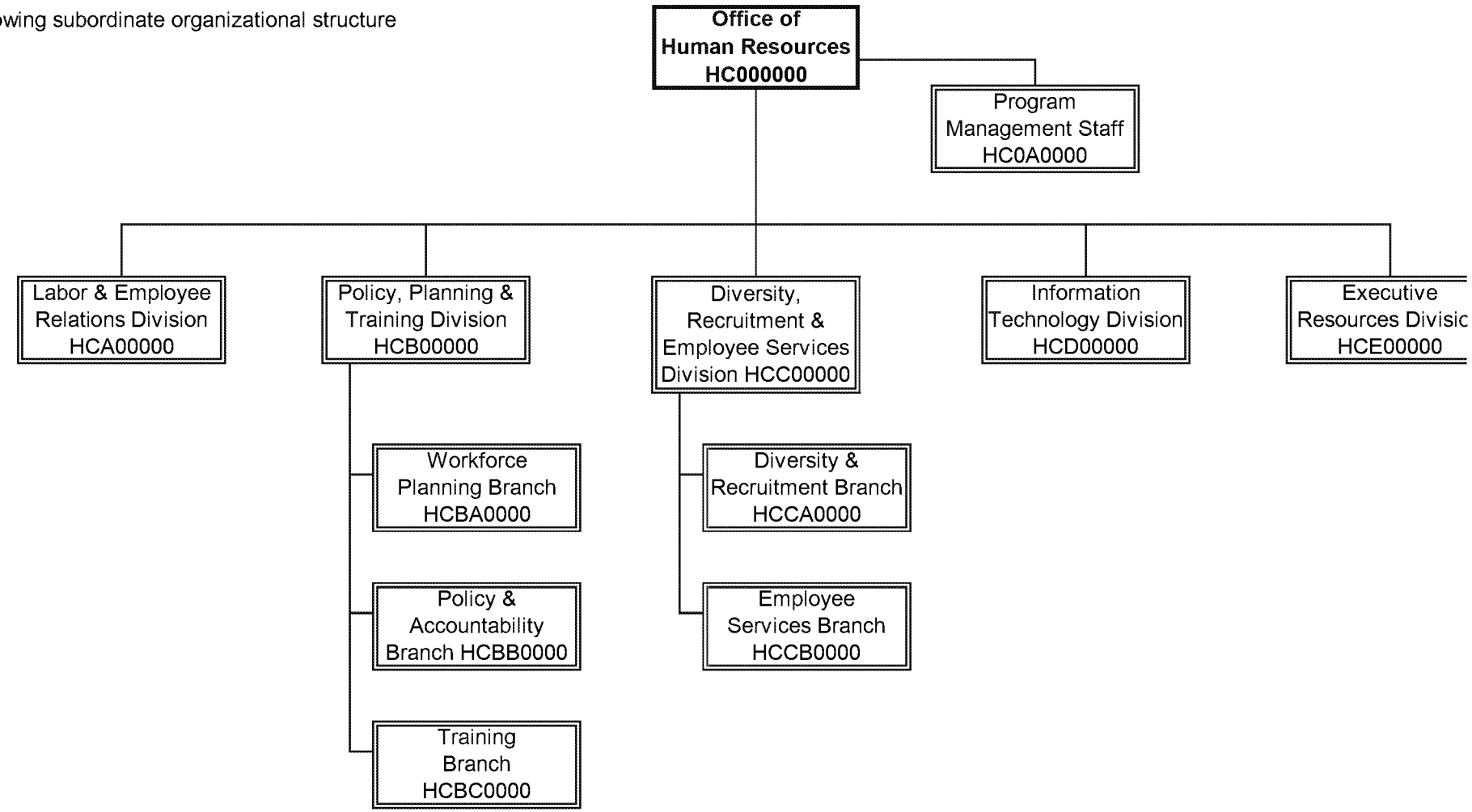


Current Organizational Structure
Office of Administration & Resources Management
Office of Management & Administration - Cinci
Showing subordinate organizational structure



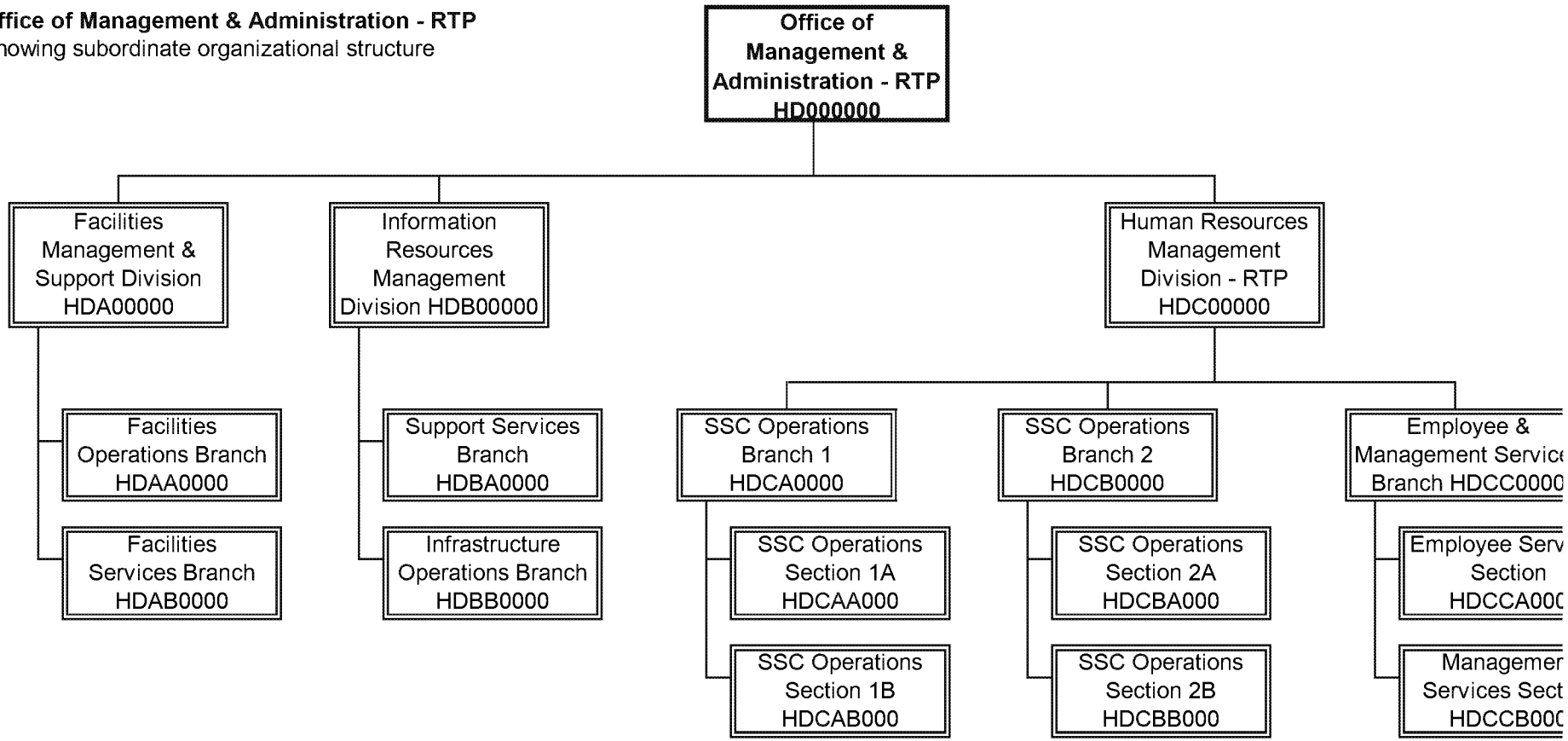
Current Organizational Structure

Office of Administration & Resources Management
Office of Human Resources
Showing subordinate organizational structure



Current Organizational Structure
Office of Administration & Resources Management

Office of Management & Administration - RTP
Showing subordinate organizational structure



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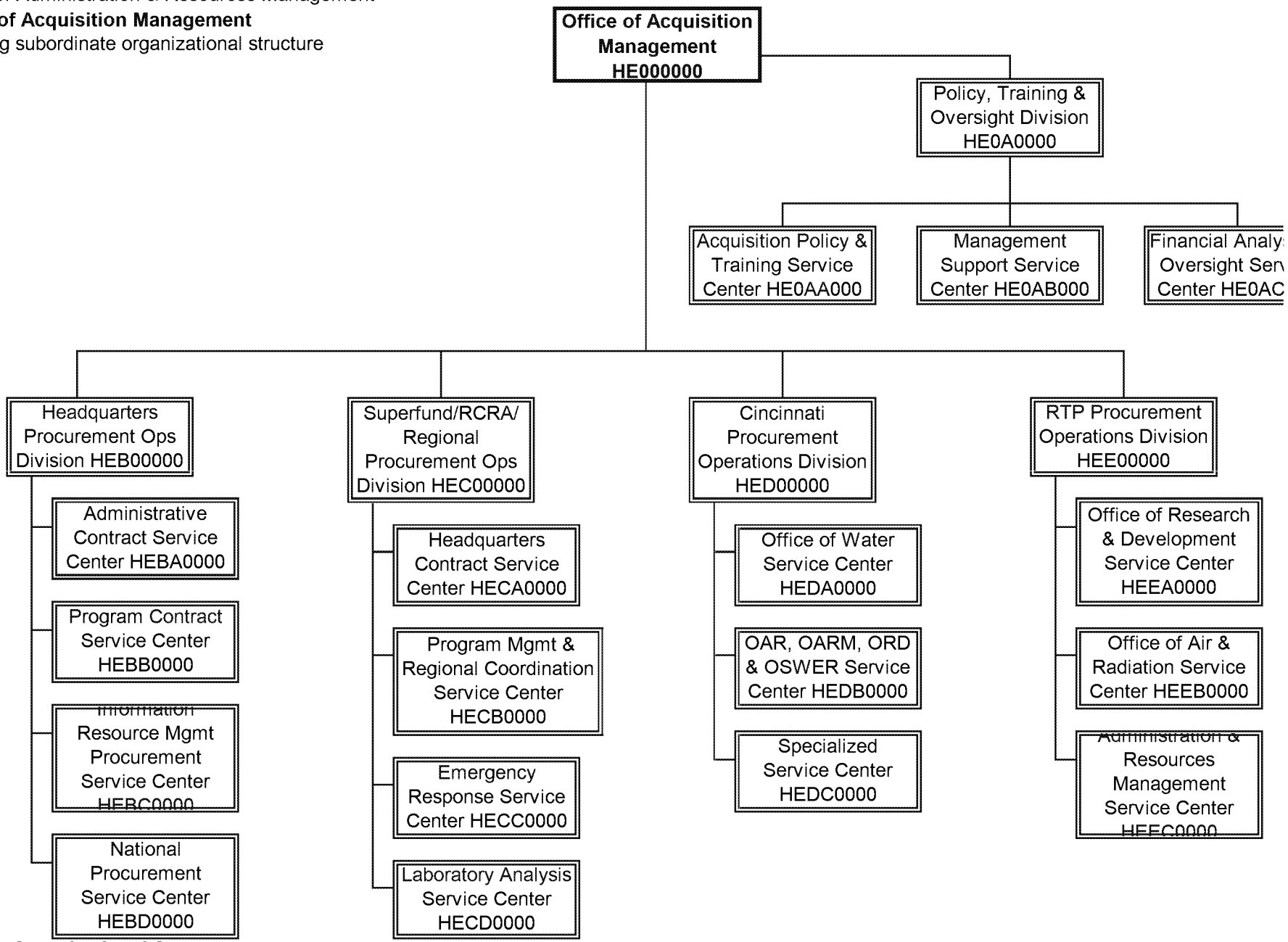
Current Organizational Structure
Office of Administration & Resources Management
Office of Acquisition Management
Showing subordinate organizational structure



Current Organizational Structure
Office of Administration & Resources Management

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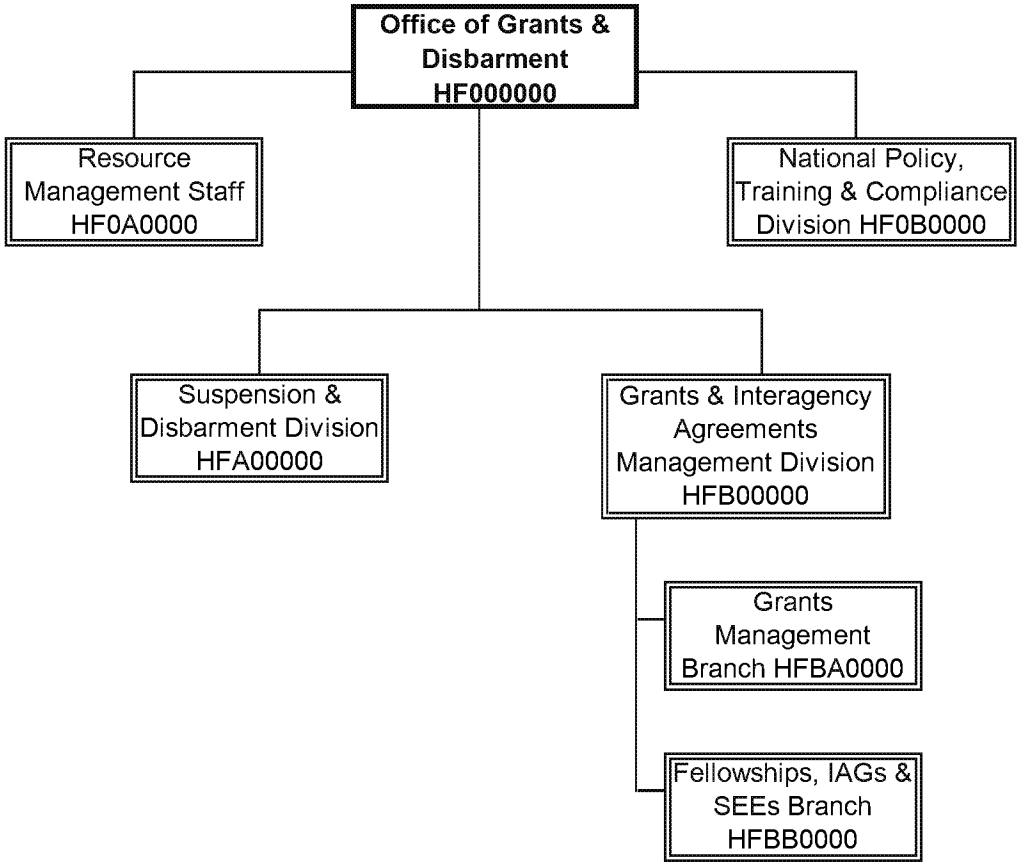
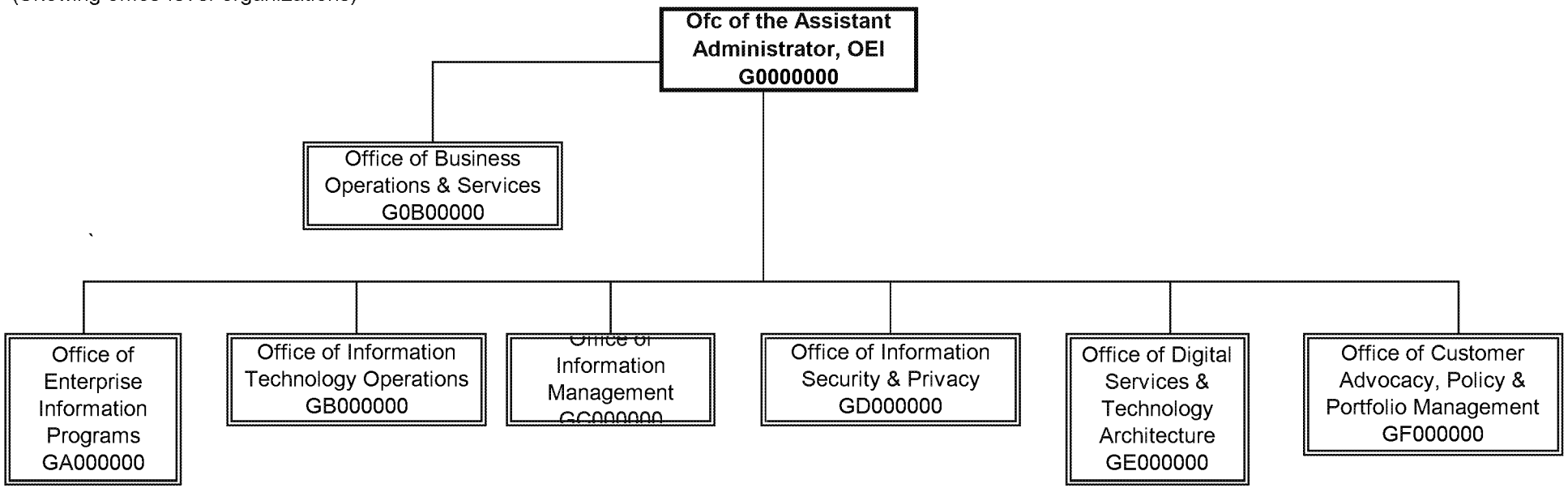
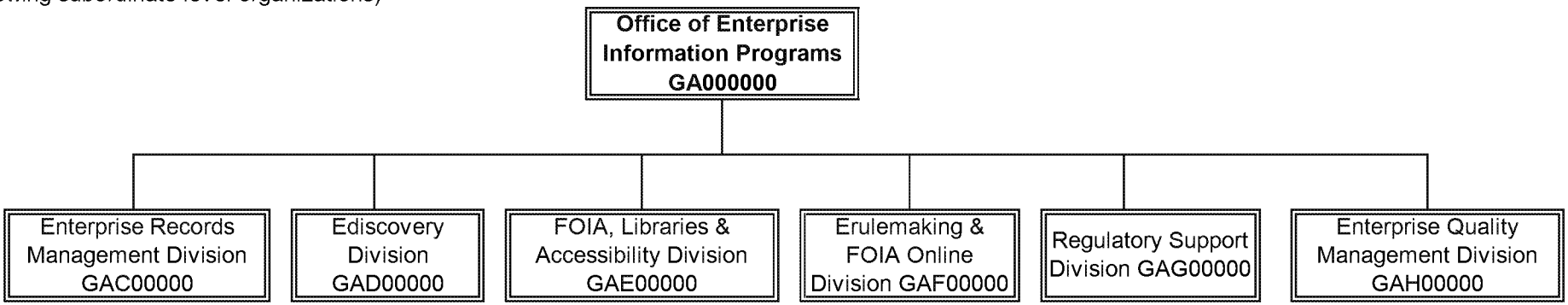
Office of Grants & Disbarment
Showing subordinate organizational structure



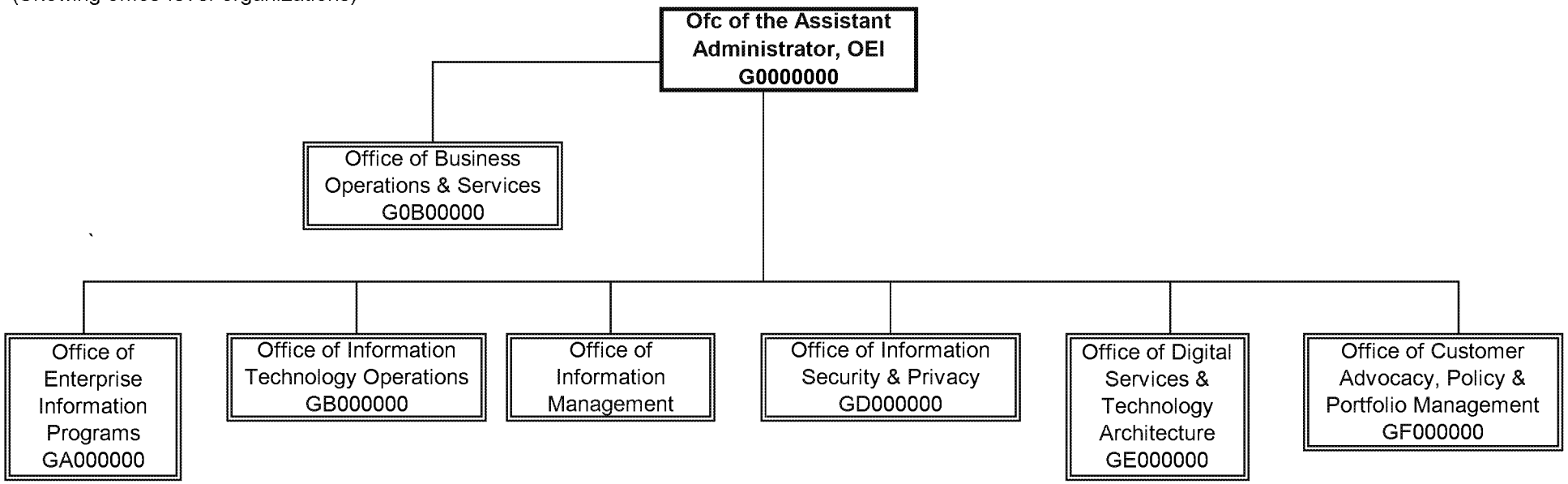
Current Organizational Structure
Office of Environmental Information
(Showing office-level-organizations)



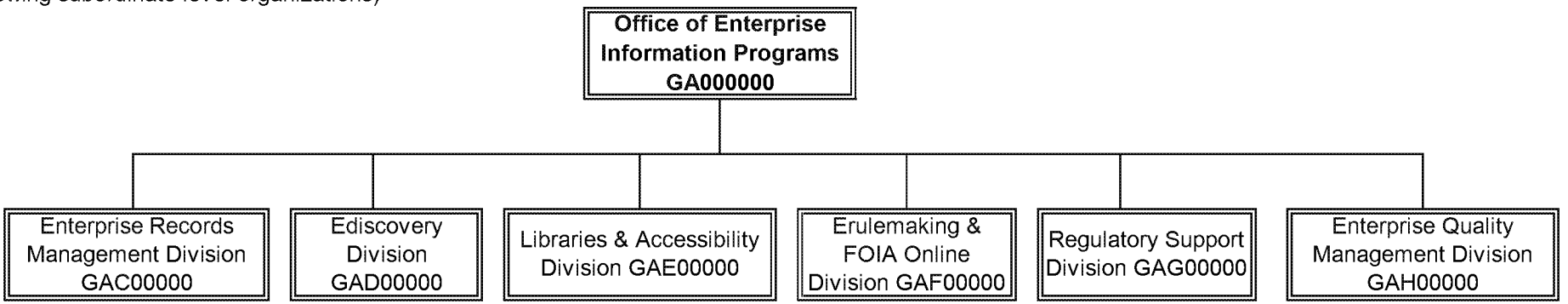
Current Organizational Structure
Office of Environmental Information
Office of Enterprise Information Programs
(Showing subordinate level organizations)



Proposed Organizational Structure
Office of Environmental Information
(Showing office-level-organizations)



Proposed Organizational Structure
Office of Environmental Information
Office of Enterprise Information Programs
(Showing subordinate level organizations)



Message

From: Grantham, Nancy [Grantham.Nancy@epa.gov]
Sent: 7/25/2018 11:05:26 PM
To: Siciliano, CarolAnn [Siciliano.CarolAnn@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; Vizian, Donna [Vizian.Donna@epa.gov]
CC: Amorosi, Joanne [Amorosi.Joanne@epa.gov]; Cooper, Marian [Cooper.Marian@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]
Subject: RE: Previous transparency memos
Attachments: image2018-07-25-190842.pdf

Please see attached. Thanks ng

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

-----Original Message-----
From: Siciliano, CarolAnn
Sent: Wednesday, July 25, 2018 12:48 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Amorosi, Joanne <Amorosi.Joanne@epa.gov>; Cooper, Marian <Cooper.Marian@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: RE: Previous transparency memos

I'm sorry, Nancy. I and my staff are not aware that Bob P. issued one.

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-5489
siciliano.carolann@epa.gov

-----Original Message-----
From: Grantham, Nancy
Sent: Wednesday, July 25, 2018 10:59 AM
To: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Amorosi, Joanne <Amorosi.Joanne@epa.gov>; Cooper, Marian <Cooper.Marian@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: RE: Previous transparency memos

Thanks .. do you have the one that Bob perciasepe issued when is was acting between Jackson and mccarthy?
Thanks ng

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

-----Original Message-----
From: Siciliano, CarolAnn
Sent: Wednesday, July 25, 2018 9:47 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Amorosi, Joanne <Amorosi.Joanne@epa.gov>; Cooper, Marian <Cooper.Marian@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: RE: Previous transparency memos

Attached are EPA's four Fishbowl Memos. In chronological order, they are: Ruckelshaus (1983), Thomas (1985), Reilly (1989) & Jackson (2009).

Administrators Browner, Whitman, Leavitt and Johnson did NOT issue Fishbowl Memos; the Agency operated under Administrator Reilly's version during those 16+ years.

Also attached are two crosswalks comparing the Fishbowl Memos to each other and to an April 2017 version prepared for Administrator Pruitt. Acting Administrator Wheeler's version appears to resemble the Jackson Memo in many significant respects. Therefore, the portion of the crosswalk studying the April 2017 draft is probably unhelpful. But the rest of the crosswalk is interesting historically.

Counseling note: Ex. 5 AC/DP

Ex. 5 AC/DP

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-5489
siciliano.carolann@epa.gov

-----Original Message-----
From: Grantham, Nancy
Sent: Wednesday, July 25, 2018 9:37 AM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Amorosi, Joanne <Amorosi.Joanne@epa.gov>; Cooper, Marian <Cooper.Marian@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>
Subject: RE: Previous transparency memos

That's what we are looking for .. can you send the compilation? Thanks ng

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

-----Original Message-----
From: Minoli, Kevin
Sent: Wednesday, July 25, 2018 9:36 AM
To: Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Amorosi, Joanne <Amorosi.Joanne@epa.gov>; Cooper, Marian <Cooper.Marian@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>
Subject: Re: Previous transparency memos

Do you mean the fishbowl memos? If so, Carol Ann has a collection of those, I believe. She' s also done a crosswalk between them.

Kevin S. Minoli
Principal Deputy General Counsel &
Designated Agency Ethics Official Office of General Counsel US Environmental Protection Agency Main Office Line: 202-564-8040

> On Jul 25, 2018, at 7:56 AM, Vizian, Donna <Vizian.Donna@epa.gov> wrote:
>
> GM - I am in search of transparency memos that have been issued by previous administrators. Please send along if you have them or an idea where I can find them.

Message

From: Minoli, Kevin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C9C0070D651A4625AC20258369F9B050-KMINOLI]
Sent: 2/15/2018 5:40:40 PM
To: Monson, Mahri [Monson.Mahri@epa.gov]
Subject: Fwd: Time Sensitive: FOIA Reorg and Congress
Attachments: Level I Determination for OEI's LAD to OGC Proposed Reorganization; ATT00001.htm

Kevin S. Minoli
Principal Deputy General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Begin forwarded message:

> **From:** "Minoli, Kevin" <Minoli.Kevin@epa.gov>
> **To:** "Vizian, Donna" <Vizian.Donna@epa.gov>
> **Subject: Time Sensitive: FOIA Reorg and Congress**
>
> Hi Donna- I could use your help with the reorg. I have been pushing extraordinarily hard for the last month to get it done by the Friday because next Tuesday is the big FOIA LEAN event that is one of the agency showcase events. It was handed from I OEI to OGC because the program was moving to OGC. In fact, Steve is no longer involved.
>
> Today we were told (see email below) after a lot of pushing for specifics on how to finalize the reorg and having been told previously the union piece was the key, that it's still sitting with the Hill and we cannot move forward. I know you had gone to the Hill and specifically raised this and the result was we were told to move forward. Can you help me figure out where we are and 1) if we need something out of Congress how to try to obtain it; or 2) if we can't obtain it what we can say at the LEAN event?
>
> Thanks! Kevin
>
> Kevin S. Minoli
> Principal Deputy General Counsel
> Office of General Counsel
> US Environmental Protection Agency
> Main Office Line: 202-564-8040
>
> Begin forwarded message:
>
>> **From:** "Boxton, Troy" <Boxton.Troy@epa.gov>
>> **To:** "Monson, Mahri" <Monson.Mahri@epa.gov>
>> **Cc:** "Stanton, Rachel" <stanton.rachel@epa.gov>, "Walsh, Ed" <Walsh.Ed@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Dolph, Becky" <Dolph.Becky@epa.gov>
>> **Subject: RE: Functional statement change--NOT substantive**
>>
>> Greetings Mahri,

It was a pleasure speaking with you today. As I mentioned this proposed reorg is a level 1 reorg, which means this is currently under congressional review. Since we do not control congress review time this could take a little longer than our normal review period.

I will continue to reach out to our congressional liaison regarding the status of this reorg. If OGC want to make changes to the functional statement now we ask that you submit now before congress provide make decision regarding this reorg. However, if the submittal is provided after congress decision then congress would need to review the package again, which could delay the implementation of this reorg.

I have attached the level determination email I sent to Becky on December 18th.

Troy Boxton, MBA
Management Analyst
Office of Administration & Resource Management
1200 Pennsylvania Ave., N.W.
Room 1419 WJC East MC-3600A
Washington, D.C. 20460
Office: (202) 564-7419
Fax: (202) 564-1928
boxton.troy@epa.gov

Message

From: Boxton, Troy [Boxton.Troy@epa.gov]
Sent: 12/18/2017 1:10:45 PM
To: Dolph, Becky [Dolph.Becky@epa.gov]
CC: Stanton, Rachel [stanton.rachel@epa.gov]; Young, Debbie [young.debbie@epa.gov]
Subject: Level I Determination for OEI's LAD to OGC Proposed Reorganization
Attachments: FEAT-FOIA Org Code.OGC.12.14.17.xlsx; OEI org charts (OEI-part of FOIA to OGC Reorg).xlsx; Signed.pdf

Greetings Becky,

The EPA Reorganization Program had the opportunity to review the proposed reorganization for OEI's LAD to OGC. We determined that the package is a Level I reorganization. The OHR's Workforce Planning Branch (WPB), Reorganization Program will shepherd this proposed reorganization throughout the review process in a timely manner. The following is a list of the required steps involved in Level I reorganizations:

1. The Reorganization Program sends proposed reorganization package to Executive Resources Division and the Office of the Chief Financial Officer for congressional review. (Approx. 10 Days) However, this could take a longer due to congressional review is warranted

2. The Reorganization Program sends proposed reorganization package to the Labor and Employee Relations (LER) for Union review. (Approx. 10 Days for Stakeholders) (Approx. 15 business days for Unions)
After the union review we will request for signature of the Decision Memorandum

3. Steps one and two are sent for review comment simultaneously

4. The Reorganization Program sends proposed reorganization package to the Office of Human Resources Information Technology (IT) Division to review Excel Spreadsheet, and establish organizational codes as required. (Approx. 15 Days)

5. Reorganization codes are established by IT Division incorporating an effective date of the codes based on People plus (PPL/HRLoB) pay period.

6. Position Descriptions are updated by the applicable Shared Service Center HR Specialist and SF-50/SF-52 forms are issued.

7. The proposed reorganization becomes effective when PPL/HRLoB Time/Labor changes are completed after the SSC have completed all administrative actions.

Estimate Time to Complete: 2 – 3 Months or sooner

If you have any questions about EPA's Reorganization process or would like to share other comments/concerns, please do not hesitate to contact Troy Boxton or Rachel Stanton by return e-mail or telephone at (202) 564-7419 or 202-564-8139.

Thank you.

Message

From: Minoli, Kevin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C9C0070D651A4625AC20258369F9B050-KMINOLI]
Sent: 2/15/2018 5:29:18 PM
To: Showman, John [Showman.John@epa.gov]
Subject: Fwd: Time Sensitive: FOIA Reorg and Congress
Attachments: Level I Determination for OEI's LAD to OGC Proposed Reorganization; ATT00001.htm

John- I got an out of office for Donna so am sending this to you.

Let me know if you want to discuss.

Thank you, Kevin

Kevin S. Minoli
Principal Deputy General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Begin forwarded message:

> **From:** "Minoli, Kevin" <Minoli.Kevin@epa.gov>
> **To:** "Vizian, Donna" <Vizian.Donna@epa.gov>
> **Subject: Time Sensitive: FOIA Reorg and Congress**
>
> Hi Donna- I could use your help with the reorg. I have been pushing extraordinarily hard for the last month to get it done by the Friday because next Tuesday is the big FOIA LEAN event that is one of the agency showcase events. It was handed from I OEI to OGC because the program was moving to OGC. In fact, Steve is no longer involved.
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> Today we were told (see email below) after a lot of pushing for specifics on how to finalize the reorg and having been told previously the union piece was the key, that it's still sitting with the Hill and we cannot move forward. I know you had gone to the Hill and specifically raised this and the result was we were told to move forward. Can you help me figure out where we are and 1) if we need something out of Congress how to try to obtain it; or 2) if we can't obtain it what we can say at the LEAN event?
>
> Thanks! Kevin
>
> Kevin S. Minoli
> Principal Deputy General Counsel
> Office of General Counsel
> US Environmental Protection Agency
> Main Office Line: 202-564-8040
>
> Begin forwarded message:
>
>> **From:** "Boxton, Troy" <Boxton.Troy@epa.gov>
>> **To:** "Monson, Mahri" <Monson.Mahri@epa.gov>
>> **Cc:** "Stanton, Rachel" <stanton.rachel@epa.gov>, "Walsh, Ed" <Walsh.Ed@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Dolph, Becky" <Dolph.Becky@epa.gov>
>> **Subject: RE: Functional statement change--NOT substantive**

Greetings Mahri,

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I will continue to reach out to our congressional liaison regarding the status of this reorg. If OGC want to make changes to the functional statement now we ask that you submit now before congress provide make decision regarding this reorg. However, if the submittal is provided after congress decision then congress would need to review the package again, which could delay the implementation of this reorg.

I have attached the level determination email I sent to Becky on December 18th.

Troy Boxton, MBA
Management Analyst
Office of Administration & Resource Management
1200 Pennsylvania Ave., N.W.
Room 1419 WJC East MC-3600A
Washington, D.C. 20460
Office: (202) 564-7419
Fax: (202) 564-1928
boxton.troy@epa.gov

Message

From: Minoli, Kevin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C9C0070D651A4625AC20258369F9B050-KMINOLI]
Sent: 2/15/2018 5:27:19 PM
To: Vizian, Donna [Vizian.Donna@epa.gov]
Subject: Time Sensitive: FOIA Reorg and Congress
Attachments: Level I Determination for OEI's LAD to OGC Proposed Reorganization; ATT00001.htm

Hi Donna- I could use your help with the reorg. I have been pushing extraordinarily hard for the last month to get it done by the Friday because next Tuesday is the big FOIA LEAN event that is one of the agency showcase events. It was handed from I OEI to OGC because the program was moving to OGC. In fact, Steve is no longer involved.

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Thanks! Kevin

Kevin S. Minoli
Principal Deputy General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Begin forwarded message:

> **From:** "Boxton, Troy" <Boxton.Troy@epa.gov>
> **To:** "Monson, Mahri" <Monson.Mahri@epa.gov>
> **Cc:** "Stanton, Rachel" <stanton.rachel@epa.gov>, "Walsh, Ed" <Walsh.Ed@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Dolph, Becky" <Dolph.Becky@epa.gov>
> **Subject: RE: Functional statement change--NOT substantive**
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>
> I have attached the level determination email I sent to Becky on December 18th.
>
> *Troy Boxton, MBA*
> *Management Analyst*
> *Office of Administration & Resource Management*
> *1200 Pennsylvania Ave., N.W.*

Room 1419 WJC East MC-3600A
Washington, D.C. 20460
Office: (202) 564-7419
Fax: (202) 564-1928
boxton.troy@epa.gov

Message

From: Minoli, Kevin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C9C0070D651A4625AC20258369F9B050-KMINOLI]
Sent: 2/12/2018 12:20:36 AM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]
Subject: Fwd: Official Stakeholder Review - OEI's LAD to OGC Proposed Reorg
Attachments: FEAT-FOIA Org Code.OGC.12.14.17.xlsx; ATT00001.htm; OEI org charts (OEI-part of FOIA to OGC Reorg).xlsx; ATT00002.htm; Signed.pdf; ATT00003.htm

Kevin S. Minoli
Principal Deputy General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Begin forwarded message:

From: "Franklin, Jamia" <franklin.jamia@epa.gov>
Date: December 18, 2017 at 10:58:21 AM EST
To: OGC Immediate Office MGMT <OGC_Immediate_Office_MGMT@epa.gov>, OGC SWERLO MGMT <OGC_SWERLO_MGMT@epa.gov>, OGC PTSLO MGMT <OGC_PTSLO_MGMT@epa.gov>, OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>, OGC ECRCO_MGMT <OGC_ECRCO_MGMT@epa.gov>, OGC ADRLO MGMT <OGC_ADRLO_MGMT@epa.gov>, OGC CRFLO MGMT <OGC_CRFLO_MGMT@epa.gov>, OGC ARLO MGMT <OGC_ARLO_MGMT@epa.gov>, OGC GLO MGMT <OGC_GLO_MGMT@epa.gov>, OGC CCILO MGMT <OGC_CCILO_MGMT@epa.gov>, OGC FEAT_MGMT <OGC_FEAT_MGMT@epa.gov>, OGC ETHICS_MGMT <OGC_ETHICS_MGMT@epa.gov>
Cc: "Johnson, AngelaL" <Johnson.AngelaL@epa.gov>, "Lee, Terry" <lee.terry@epa.gov>
Subject: FW: Official Stakeholder Review - OEI's LAD to OGC Proposed Reorg

Good Morning,

Please see the email below and attachments for an EPA Proposed Reorg Review. Comments are due by Thursday, January 4, 2018 to Jamia Franklin (franklin.jamia@epa.gov) and Angela Johnson (Johnson.angelaL@epa.gov). If no comments/responses are received by the due date, we will assume that there are no issues with this EPA Proposed Reorg Review. Thank you for your time.

Jamia

From: "Boxton, Troy" <Boxton.Troy@epa.gov>
To: "Binder, Michael" <Binder.Michael@epa.gov>, "Greening, Gary" <Greening.Gary@epa.gov>, "Johnson, Melissa" <Johnson.Melissa@epa.gov>, "Showman, John" <Showman.John@epa.gov>, "Salahuddin, Diane" <Salahuddin.Diane@epa.gov>, "Dubbs, Kimberly" <Dubbs.Kimberly@epa.gov>, "Soward, Ruth-Alene" <Soward.Ruth-Alene@epa.gov>, "Ovalle, Art" <Ovalle.Arturo@epa.gov>, "Maher, Karen" <Maher.Karen@epa.gov>, "Lee, Terry" <lee.terry@epa.gov>, "Larsen, Elena"

<Larsen.Elena@epa.gov>, "Gutshall, Renee" <Gutshall.Renee@epa.gov>, "Hitchens, Lynnann" <hitchens.lynnann@epa.gov>
Cc: "Stanton, Rachel" <stanton.rachel@epa.gov>, "Young, Debbie" <young.debbie@epa.gov>
Subject: Official Stakeholder Review - OEI's LAD to OGC Proposed Reorg

Greetings

We are submitting – OEI's LAD to OGC proposed reorganization to you and the other applicable stakeholders for review, and/or concurrence or non-concurrence. The projected due date is **Thursday, January 4, 2018** or sooner. If no comments/responses are received by this date, we will continue to process this reorganization. If the stakeholders respond with comments, these comments will be forwarded by us and then addressed by OEI's LAD to OGC. We will modify the due date as applicable. If you have any questions, please feel free to contact Troy Boxton or Rachel Stanton at (202) 564-7419 or (202) 564 - 8139 or simply reply to this e-mail.

- **IMPACT**

This reorganization relocates the FOIA staff from the FOIA, Libraries & Accessibility Division of the Office of Enterprise Information Programs within OEI to the OGC. The purpose of this change is to co-locate the FOIA program staff and the FOIA Expert Assistance Team (FEAT) staff under a single office. This is expected to create efficiencies and improve the effectiveness of the agency's FOIA program

Thanks,

Troy Boxton, MBA
Management Analyst
Office of Administration & Resource Management
1200 Pennsylvania Ave., N.W.
Room 1419 WJC East MC-3600A
Washington, D.C. 20460
Office: (202) 564-7419
Fax: (202) 564-1928
boxton.troy@epa.gov

Appointment

From: Jacks, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D4A46EC26B7948BA8D890C8C93FECDFF-LUCENTE, SU]
Sent: 6/7/2018 9:58:47 PM
To: Fine, Steven [fine.steven@epa.gov]; melanie.a.pustay@usdoj.gov
CC: bobak.talebian@usdoj.gov; Jacks, Susan [Jacks.Susan@epa.gov]; Lisa Jones-Parra (Jones-Parra.Lisa@epa.gov) [Jones-Parra.Lisa@epa.gov]; Megan Grogard (Grogard.Megan@epa.gov) [Grogard.Megan@epa.gov]

Subject: FOIAonline and the transition of the new system
Attachments: Call with Steve
Location: Melenie will call Steve @ 202-564-6665

Start: 6/13/2018 7:00:00 PM
End: 6/13/2018 7:30:00 PM
Show Time As: Busy

As of June 7, 2018: Call scheduled per Bobby Talebian request.-Susan

Message

From: Talebian, Bobak (OIP) [Bobak.Talebian@usdoj.gov]
Sent: 6/7/2018 6:51:37 PM
To: Jacks, Susan [Jacks.Susan@epa.gov]
CC: Fine, Steven [fine.steven@epa.gov]; Pustay, Melanie A (OIP) [Melanie.A.Pustay@usdoj.gov]
Subject: Call with Steve

Hi Susan,

I hope all is well. We would like to see if Steve is available for a call with Melanie regarding FOIAonline and the transition of the new system during this last quarter of the fiscal year and into the FOIA reporting period. Is Steve available before early next week?

Thanks so much,

Bobby

Bobby Talebian
Chief, FOIA Compliance Staff
Office of Information Policy
United States Department of Justice
(202) 514-3642 (Main)
(202) 616-5488 (Direct)
(202) 514-1009 (fax)

Message

From: Jones-Parra, Lisa [Jones-Parra.Lisa@epa.gov]
Sent: 1/29/2018 6:13:50 PM
To: Fine, Steven [fine.steven@epa.gov]
CC: Jones, Monica [Jones.Monica@epa.gov]; Grogard, Megan [Grogard.Megan@epa.gov]
Subject: FOIA QFR: Late-breaking Comment
Attachments: FOIA QFRs from 12-7-2017 House Env Subcomm - Draft 1-26 V3 - cy cmts.docx

Importance: High
Flag: Follow up

Hi Steve,

Please see below. I don't believe you would have any concerns about adding the word 'generally' as described below. Can you let me know?

Thanks

Lisa

From: Jones, Monica
Sent: Monday, January 29, 2018 1:02 PM
To: Gottesman, Larry <Gottesman.Larry@epa.gov>; Jones-Parra, Lisa <Jones-Parra.Lisa@epa.gov>
Cc: Moser, Rebecca <Moser.Rebecca@EPA.GOV>; Byrd, Jonda <byrd.jonda@epa.gov>
Subject: FW: Late-breaking Comment
Importance: High

Larry & Lisa,

This looks good to me. Are you OK with the insertion of this word?

Monica D. Jones, Deputy Director
Office of Enterprise Information Programs
Office of Environmental Information
Mailcode: 2821T
Office Phone: (202) 564-1641
Mobile Phone: (202) 689-9396

NOTICE: This communication may contain deliberative, privileged or other confidential information. Do not release under FOIA without appropriate review. If you are not the intended recipient or believe you have received this communication in error, please delete the copy you received, and do not print, copy, retransmit, disseminate or otherwise use the information. Thank you.

From: Youngblood, Charlotte
Sent: Monday, January 29, 2018 12:40 PM
To: Jones, Monica <Jones.Monica@epa.gov>
Cc: Moser, Rebecca <Moser.Rebecca@EPA.GOV>; Dolph, Becky <Dolph.Becky@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Miller, Kevin <Miller.Kevin@epa.gov>; Hammitt, Jennifer <Hammitt.Jennifer@epa.gov>
Subject: Late-breaking Comment

Monica,

Ex. 5 AC/DP

Thanks!

Charlotte Youngblood
Deputy Associate General Counsel
General Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-0283
youngblood.charlotte@epa.gov

17. It appears that EPA has now adopted a policy of responding to FOIA requests based only or primarily on the date of the request, regardless of the type of information requested, the simplicity of the request, or the relevance of the information to the public. Is that correct?

Ex. 5 AC/DP

18. If not, please describe in detail the criteria that EPA is now using to prioritize processing FOIA requests?

Ex. 5 AC/DP

1-25-2018

Draft Responses to FOIA-Related QFRs from 12/7/2017 House Environment Subcommittee Hearing

Ex. 5 AC/DP

17. Given the legal expenses and waste of resources caused by EPA's failure to comply with FOIA deadlines, do you agree that EPA should streamline the review process for release of documents to eliminate any unnecessary steps, such as multiple levels of document review?

Ex. 5 AC/DP

18. Do you [that] it is appropriate for political appointees and advisors to hold up the release of document for further review, even when documents have already been determined to be public documents not subject to FOIA exemptions by FOIA officers and FOIA attorney advisors?

Ex. 5 AC/DP

19. Why would it be necessary for the documents to undergo a political review if they are public documents under the law?

Ex. 5 AC/DP

Ex. 5 AC/DP

20. It appears that EPA has now adopted a policy of responding to FOIA requests based only or primarily on the date of the request, regardless of the type of information requested, the simplicity of the request, or the relevance of the information to the public. Is that correct?

Ex. 5 AC/DP

21. If not, please describe in detail the criteria that EPA is now using to prioritize processing FOIA requests?

Ex. 5 AC/DP

22. Given EPA's large backlog, under your current approach, how long will it be before you respond to a substantial number of requests regarding your tenure and release documents generated during your tenure (besides those documents that EPA releases when a lawsuit is filed)? Please provide an estimate in weeks, months, or years.

Ex. 5 AC/DP

23. Will you establish a policy of responding to new FOIA requests on an ongoing basis, rather than relegating them to the back of the line and without waiting to be sued on each request?

Ex. 5 AC/DP

Message

From: White, Elizabeth [white.elizabeth@epa.gov]
Sent: 7/26/2018 3:23:57 PM
To: Fine, Steven [fine.steven@epa.gov]; Palich, Christian [palich.christian@epa.gov]; Frye, Tony (Robert) [frye.robert@epa.gov]; Lyons, Troy [lyons.troy@epa.gov]; Blake, Wendy [Blake.Wendy@epa.gov]; Miller, Kevin [Miller.Kevin@epa.gov]
Subject: RE: draft Barrasso response
Attachments: Barrasso response redline BW edits.docx

Attached are my edits in redline. Thanks.

Beth White
Director, Office of the Executive Secretariat
U.S. Environmental Protection Agency
(202) 564-1781 direct
(202) 816-1701 cell

From: Fine, Steven
Sent: Wednesday, July 25, 2018 11:27 AM
To: Palich, Christian <palich.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Miller, Kevin <Miller.Kevin@epa.gov>
Subject: RE: draft Barrasso response

I heard from Wendy that she's comfortable with the letter. I have made some very minor edits that don't affect the meaning. I have attached a redline version showing what I changed.

We're working on putting this on letterhead so I can sign it.

From: Palich, Christian
Sent: Tuesday, July 24, 2018 9:15 AM
To: Fine, Steven <fine.steven@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Miller, Kevin <Miller.Kevin@epa.gov>
Subject: RE: draft Barrasso response

This looks good to me.

Christian R. Palich
Deputy Associate Administrator
Office of Congressional & Intergovernmental Affairs
U.S Environmental Protection Agency
O: 202.564.4944
C: 202.306.4656
E: Palich.Christian@epa.gov

From: Fine, Steven
Sent: Tuesday, July 24, 2018 8:53 AM
To: Palich, Christian <palich.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Miller,

Kevin <Miller.Kevin@epa.gov>
Subject: draft Barrasso response

All,

I have attached the draft response to Senator Barrasso's letter regarding email searches. Please let me know if you have any suggestions or concerns. OCIR would like to have a final version by tomorrow.

Thanks

Steve

Message

From: Jones-Parra, Lisa [Jones-Parra.Lisa@epa.gov]
Sent: 8/1/2018 1:14:59 PM
To: Noga, Vaughn [Noga.Vaughn@EPA.GOV]; Fine, Steven [fine.steven@epa.gov]
Subject: RE: Review Needed by Monday 6/4: DRAFT Memoranda on Secondary Email Accounts and Searches
Attachments: DRAFT Procedure for Secondary Email Acounts - 2018-08-01 - Redline.docx; MEMORANDUM_Noga_Procedure for Secondary Accounts_ALL COMMENTS_ 5 30.docx

Hi Vaughn,

Ex. 5 Deliberative Process (DP)

Thanks

Lisa

Lisa Jones-Parra
Senior Advisor to the Principal Deputy Assistant Administrator
and Deputy Chief Information Officer
Office of Environmental Information
U.S. Environmental Protection Agency
Desk: (202) 566-1157
Cell: (202) 384-2588

From: Noga, Vaughn
Sent: Wednesday, August 1, 2018 8:44 AM
To: Jones-Parra, Lisa <Jones-Parra.Lisa@epa.gov>; Fine, Steven <fine.steven@epa.gov>
Subject: RE: Review Needed by Monday 6/4: DRAFT Memoranda on Secondary Email Accounts and Searches

Could I possibly see the draft procedure?

From: Jones-Parra, Lisa
Sent: Wednesday, August 01, 2018 8:29 AM
To: Fine, Steven <fine.steven@epa.gov>; Noga, Vaughn <Noga.Vaughn@EPA.GOV>
Subject: RE: Review Needed by Monday 6/4: DRAFT Memoranda on Secondary Email Accounts and Searches

Hi Steve,

Ex. 5 Deliberative Process (DP)

Lisa

Lisa Jones-Parra
Senior Advisor to the Principal Deputy Assistant Administrator
and Deputy Chief Information Officer
Office of Environmental Information
U.S. Environmental Protection Agency
Desk: (202) 566-1157
Cell: (202) 384-2588

From: Fine, Steven
Sent: Wednesday, August 1, 2018 7:50 AM
To: Noga, Vaughn <Noga.Vaughn@EPA.GOV>
Cc: Jones-Parra, Lisa <Jones-Parra.Lisa@epa.gov>
Subject: FW: Review Needed by Monday 6/4: DRAFT Memoranda on Secondary Email Accounts and Searches
Importance: High

Ex. 5 Deliberative Process (DP)

From: Hammitt, Jennifer
Sent: Friday, July 20, 2018 9:34 AM
To: Blake, Wendy <Blake.Wendy@epa.gov>; Fine, Steven <fine.steven@epa.gov>
Subject: FW: Review Needed by Monday 6/4: DRAFT Memoranda on Secondary Email Accounts and Searches
Importance: High

Last known versions of memos on secondary email with incorporated comments from OITO, EDD, OGC-GLO, OEX, NFO.

Jennifer Hammitt
Attorney-Advisor, Information Law Practice Group
Office of General Counsel, General Law Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, MC-2377A
Washington, DC 20460
(202) 564-5097

From: Hammitt, Jennifer
Sent: Tuesday, June 05, 2018 5:22 PM
To: Burke, Marcella <burke.marcella@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: Fwd: Review Needed by Monday 6/4: DRAFT Memoranda on Secondary Email Accounts and Searches

Hi Marcella, Elise-

Attached please find minor revisions to the memoranda on the secondary email accounts from Steve Fine. Wendy asked me to send them to you tonight in advance of hot issues tomorrow. Thanks.

Sent from my iPhone

Begin forwarded message:

From: "Fine, Steven" <fine.steven@epa.gov>
Date: June 4, 2018 at 7:47:20 PM EDT
To: "Hammitt, Jennifer" <Hammitt.Jennifer@epa.gov>
Cc: "Moser, Rebecca" <Moser.Rebecca@EPA.GOV>, "Jones-Parra, Lisa" <Jones-Parra.Lisa@epa.gov>, "Johnston, Robert" <Johnston.Robert@epa.gov>, "Thompson, BrianK" <Thompson.BrianK@epa.gov>, "Blake, Wendy" <Blake.Wendy@epa.gov>, "Bigioni, Neil" <bigioni.neil@epa.gov>
Subject: RE: Review Needed by Monday 6/4: DRAFT Memoranda on Secondary Email Accounts and Searches

Jennifer,

Thank you. I appreciate you and the rest of the team working on this. You have done an excellent job.

I have attached comments on both memos. I'd be happy to discuss them. If Beth White has not seen a recent version of the memo from me, I'd like to have the opportunity to coordinate with her before I finalize that memo.

Steve

From: Hammitt, Jennifer
Sent: Wednesday, May 30, 2018 4:39 PM
To: Fine, Steven <fine.steven@epa.gov>
Cc: Moser, Rebecca <Moser.Rebecca@EPA.GOV>; Jones-Parra, Lisa <Jones-Parra.Lisa@epa.gov>; Johnston, Robert <Johnston.Robert@epa.gov>; Thompson, BrianK <Thompson.BrianK@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Bigioni, Neil <bigioni.neil@epa.gov>
Subject: Review Needed by Monday 6/4: DRAFT Memoranda on Secondary Email Accounts and Searches

Steve –

Attached please find an updated draft of a memorandum to be sent from your office to the responsible Division Directors and senior leadership regarding provision of secondary email accounts and searches of these accounts. I have also attached an accompanying, short memorandum to be sent from Matt Leopold, General Counsel, to senior Agency leadership, outlining the Office of General Counsel's expectations and recommendations regarding these accounts. These memoranda are intended to respond to inquiries and clarify the Agency's processes in advance of a formal procedure, which is being developed for CIO signature.

We have worked with individuals in OEIP and OITO, as well as the National FOIA Office here in OGC. The current drafts represent the consensus language agreed upon by Wendy Blake, Neil Bigioni, Rebecca Moser, Brian Thompson, and Robert Johnston.

At this point, we are circulating the memorandum to you for your review and comment before signature. We have also circulated the memo to Kevin Minoli and our front office for their review and comment. We understand that you have suggested that a "one-memo" approach might be preferable; however, in light of the effort to get to this point and in order to maintain clarity of roles, we are keeping the two-memo structure at this time, although if there are further discussions of form and format, please just let me know.

Please provide any comments on the Leopold memo by **COB Monday, 6/4**, in order to get that memorandum out next week. I have asked our front office to provide you with any comments on your memo by 6/4 as well. It is my hope to get both finalized as quickly as possible.

Thank you, and as always, call me with any questions.

Jennifer Hammitt
Attorney-Advisor, Information Law Practice Group
Office of General Counsel, General Law Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, MC-2377A
Washington, DC 20460
(202) 564-5097

Message

From: Saltman, Tamara [Saltman.Tamara@epa.gov]
Sent: 2/26/2018 10:26:37 PM
To: Fine, Steven [fine.steven@epa.gov]
Subject: Fwd: FOIA Slides
Attachments: FOIA Lean Event OutBrief.pptx; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

> **From:** "Poole, Laura" <Poole.Laura@epa.gov>
> **To:** "Gottesman, Larry" <Gottesman.Larry@epa.gov>, "Clarke, Victoria" <clarke.victoria@epa.gov>, "Moumbleaux, Joan" <moumbleaux.joan@epa.gov>, "Hammitt, Jennifer" <Hammitt.Jennifer@epa.gov>, "Kelly, Lynn" <Kelly.Lynn@epa.gov>, "Schumacher, Wendy" <schumacher.wendy@epa.gov>, "Thompson, BrianK" <Thompson.BrianK@epa.gov>, "Crawford, Tim" <Crawford.Tim@epa.gov>, "Lubetsky, Jonathan" <Lubetsky.Jonathan@epa.gov>, "Evanko, Peter" <Evanko.Peter@epa.gov>, "Kercheval, Stephanie" <Kercheval.Stephanie@epa.gov>, "Engels, Alan" <engels.alan@epa.gov>, "Wheatley, Jessica" <wheatley.jessica@epa.gov>, "Busterud, Gretchen" <Busterud.Gretchen@epa.gov>, "Price, Lisa" <Price.Lisa@epa.gov>, "Blake, Wendy" <Blake.Wendy@epa.gov>, "Saltman, Tamara" <Saltman.Tamara@epa.gov>, "Dolph, Becky" <Dolph.Becky@epa.gov>
> **Cc:** "DeBell, Kevin" <debell.kevin@epa.gov>
> **Subject: FOIA Slides**
>
> Good Evening,
> Please find attached the slides from today's briefing. Thank you again for your enthusiastic participation in this weeks event. You all generated some great ideas and I look forward to working with you as we move forward.
>
> Have a great weekend,
> Laura

Sent from my iPhone

Begin forwarded message:

> **From:** "GM Sieber" <gmsieber@msipros.com>
> **To:** "Poole, Laura" <Poole.Laura@epa.gov>
> **Subject: FOIA Slides**
>
> Here you go. I will follow up with the Excel and process maps.

G. M. Sieber
President
MSI

Management Science and Innovation
P: 703-437-5236 x111
F: 703-995-0667
http://www.MSIPROS.com
Follow us on Linked In
Or
Check out my Blog

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Message

From: Jones-Parra, Lisa [Jones-Parra.Lisa@epa.gov]
Sent: 3/23/2018 3:00:01 PM
To: Dolph, Becky [Dolph.Becky@epa.gov]
CC: Miller, Kevin [Miller.Kevin@epa.gov]; Fine, Steven [fine.steven@epa.gov]; Moser, Rebecca [Moser.Rebecca@EPA.GOV]; Gottesman, Larry [Gottesman.Larry@epa.gov]
Subject: RE: Chief FOIA Officer Designation
Attachments: Chief FOIA Officer Designation.pdf

Hi Becky,

This is what I was able to find. The original request came from EO No. 13392 titled Improving agency Disclosure of Information (dated 12/14/2005). It stated in section 2(a):

> "(a) *Designation*. The head of each agency shall designate within 30 days of the date of this order a senior official of such agency (at the Assistant Secretary or equivalent level), to serve as the Chief FOIA Officer of that agency. The head of the agency shall promptly notify the Director of the Office of Management and Budget (OMB Director) and the Attorney General of such designation and of any changes thereafter in such designation."

So I searched CMS for memos around that timeframe and was able to find the attached memo making the designation to the AA of OEI.

As you, I was not able to find anything in our delegation manual.

Please let me know if this is what you were looking for. Looping in Rebecca and Larry in case they have anything to add.

Lisa

Lisa Jones-Parra
Senior Advisor
Office of Environmental Information
U.S. Environmental Protection Agency
Desk: (202) 566-1157
Cell: (202) 384-2588

From: Dolph, Becky
Sent: Friday, March 23, 2018 9:56 AM
To: Jones-Parra, Lisa <Jones-Parra.Lisa@epa.gov>
Cc: Miller, Kevin <Miller.Kevin@epa.gov>
Subject: Re: Chief FOIA Officer Designation

Great — thanks Lisa.

Sent from my iPhone

On Mar 23, 2018, at 9:24 AM, Jones-Parra, Lisa <Jones-Parra.Lisa@epa.gov> wrote:

> Hi Becky,
>
> I want to acknowledge receipt of your question. I am researching how the designation is made and will let you know as soon as I find out.

Thanks

Lisa

Lisa Jones-Parra
Senior Advisor
Office of Environmental Information
U.S. Environmental Protection Agency
Desk: (202) 566-1157
Cell: (202) 384-2588

From: Dolph, Becky
Sent: Thursday, March 22, 2018 4:52 PM
To: Jones-Parra, Lisa <Jones-Parra.Lisa@epa.gov>
Cc: Miller, Kevin <Miller.Kevin@epa.gov>
Subject: Chief FOIA Officer Designation

Hi Lisa – in preparation of the reorganization of the FOIA program into OGC, do you know by what mechanism the Agency has designated the Chief FOIA Officer, as required by the FOIA statute? I understand that currently Steve, as the Acting AA of OEI, currently holds this position. We need to prepare to change this to the General Counsel. It does not appear that this was done by delegation, so I thought perhaps you might know how it was done.

Thanks for your assistance,
Becky

Becky Dolph | Director, FOIA Expert Assistance Team Office
U.S Environmental Protection Agency
Office of General Counsel | 7309B WJCN | 202-564-5771

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 5 2006

THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Designation of Chief Freedom of Information Act Officer

TO: Deputy Administrator
Chief of Staff
Deputy Chief of Staff
Assistant Administrators
General Counsel
Inspector General
Chief Financial Officer
Associate Administrators
Regional Administrators
Staff Office Directors

In accordance with the Executive Order signed by President Bush on December 14, 2005, I am designating the position of Assistant Administrator, Office of Environmental Information, as the U.S. Environmental Protection Agency's Chief Freedom of Information Act Officer. Under the Order, agencies are required to designate a Chief Freedom of Information Act Officer within 30 days of the date the Order was signed. The Chief FOIA Officer will have agency-wide responsibility for efficient and appropriate compliance with FOIA and the requirements of the Executive Order.

Stephen L. Johnson

Message

From: Jones-Parra, Lisa [Jones-Parra.Lisa@epa.gov]
Sent: 1/26/2018 3:19:40 PM
To: Fine, Steven [fine.steven@epa.gov]
Subject: FW: FOIA QRS in Follow-up to 12-7-2017 House Env Subcomm Hearing
Attachments: 12.7.17 QFRs_Pruitt.pdf; FOIA QFRs from 12-7-2017 House Env Subcomm - Draft 1-24-2018v2 - clean copy.docx; FW: FOIA QRS in Follow-up to 12-7-2017 House Env Subcomm Hearing

Importance: High

Hi Steve,

Draft responses are on the Word document currently being reviewed by OGC. I added a third attachment that includes the Record response but please note that OGC owns these responses and OEI was not listed as a responder so this is only additional information that OGC may or may not choose to use.

Thanks

Lisa

Lisa Jones-Parra
Senior Advisor to the Acting Chief Information Officer
Office of Environmental Information
U.S. Environmental Protection Agency
Desk: (202) 566-1157
Cell: (202) 384-2588

From: Moser, Rebecca
Sent: Thursday, January 25, 2018 2:31 PM
To: Blake, Wendy <Blake.Wendy@epa.gov>; Dolph, Becky <Dolph.Becky@epa.gov>; Youngblood, Charlotte <Youngblood.Charlotte@epa.gov>; Miller, Kevin <Miller.Kevin@epa.gov>
Cc: Gottesman, Larry <Gottesman.Larry@epa.gov>; Shenefiel, Pam <shenefiel.pam@epa.gov>; Grogard, Megan <Grogard.Megan@epa.gov>; Jones-Parra, Lisa <Jones-Parra.Lisa@epa.gov>; Byrd, Jonda <byrd.jonda@epa.gov>
Subject: FW: FOIA QRS in Follow-up to 12-7-2017 House Env Subcomm Hearing

Wendy, Becky, Charlotte & Kevin:

Please find attached OEI's draft responses to the FOIA QFRs, in follow-up to the 12-7-2017 House Environment Subcommittee Hearing.
Steve Fine has not yet reviewed these, but has asked to see the final responses before we send them to OCIR.

Please review the attached draft and let us know as soon as you can if you have any edits. Thank you!

Rebecca

Rebecca G. Moser
Director, Office of Enterprise Information Programs
Office of Environmental Information
U.S. Environmental Protection Agency
Phone: 202-566-0252

From: Moser, Rebecca
Sent: Wednesday, January 24, 2018 3:33 PM
To: Blake, Wendy <Blake.Wendy@epa.gov>; Dolph, Becky <Dolph.Becky@epa.gov>
Cc: Gottesman, Larry <Gottesman.Larry@epa.gov>; Byrd, Jonda <byrd.jonda@epa.gov>; Shenefiel, Pam <shenefiel.pam@epa.gov>; Robert Johnston <Johnston.Robert@epa.gov>; Miller, Kevin <Miller.Kevin@epa.gov>; Grogard, Megan <Grogard.Megan@epa.gov>; Jones-Parra, Lisa <Jones-Parra.Lisa@epa.gov>
Subject: FOIA QRS in Follow-up to 12-7-2017 House Env Subcomm Hearing

Wendy & Becky:

I wanted to make sure that you're both in the loop on the QFRs we received from OCIR in follow-up to the Administrator's 12/7/2017 hearing before the House Environment Subcommittee.
Larry touched base with Kevin about the FOIA-related QFRs earlier today, and Larry is now drafting initial responses to the FOIA questions. We'll send the draft responses to you as soon as we have them ready.

Steve wants to review the draft responses before we send them back to OCIR. We're trying to complete this by COB tomorrow.
We'll be back in touch again soon.

Rebecca

Rebecca G. Moser
Director, Office of Enterprise Information Programs
Office of Environmental Information
U.S. Environmental Protection Agency
Phone: 202-566-0252

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225-2927
Minority (202) 225-3641

January 19, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Pruitt:

Thank you for appearing before the Subcommittee on Environment on December 7, 2017, to testify at the hearing entitled "The Mission of the U.S. Environmental Protection Agency."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Friday, February 2, 2018. Your responses should be mailed to Allie Bury, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Allie.Bury@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

John Shimkus
Chairman
Subcommittee on Environment

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment

Attachment

Attachment—Additional Questions for the Record

The Honorable John Shimkus

1. This committee was instrumental in developing the Electronic Hazardous Waste Manifest Act of 2012, which requires EPA to replace the outdated paper documents with a new electronic system for tracking all hazardous waste shipments.

    a. What are some of the other ways the hazardous waste program could be improved, particularly in terms of the elimination of duplicative and unnecessary regulations?

    b. Is EPA pursuing any of these efforts?

2. The previous Administration attempted to regulate farms and agricultural processors by saying that its 2009 Endangerment Finding regulated "biogenic" CO2 from agricultural crops. I understand The Endangerment Finding, however, never mentions the word "biogenic."

    a. Do you intend to look at this interpretation of the Endangerment Finding?

    b. If so, would you view it in terms of whether EPA overreached to regulate natural CO2 from U.S. farms?

3. On October 17, 2017, EPA's Air Enforcement Division sent a letter to the Ozone Transport Commission stating that the agency "agrees that the 1986 policy on aftermarket catalytic converter emissions is outdated."

    a. What steps are being taken to update this policy?

    b. Does the Agency have a timeline for this process?

4. There has been concern that EPA's regional offices enforce their authority differently from each other and Headquarters guidance. Do you intend to bring alignment among EPA Headquarters and the Regions?

5. The Administration's budget request zeroed out the funding to the Department of Justice for superfund-related enforcement activities and for cost recovery efforts for the superfund program. If the goal is to get more sites cleaned up and to speed up cleanups, that seems like an odd budget request since DOJ brings money back into the federal coffers from superfund polluters – can you explain to us why the president's budget request would zero out those funds?

6. On December 1, 2017 EPA issued a decision not to do a final rule regarding financial assurance requirements for the hard rock mining sector. Can you tell us what the status is of the 108(b) rule making for the other industry sectors that are next in line [chemical manufacturing, petroleum and coal products manufacturing, and the electric power generation, transmission, and distribution]?

7. EPA announced that it could be a year before it can start cleanup of the San Jacinto River Waste Pits, which sprung a leak during Hurricane Harvey flooding. Is that because EPA officials are in the process of negotiating with responsible parties to pay for the $115 million project?

    a. Does EPA have a plan to address the leaking cap in the meantime?

    b. It was also announced that once the cleanup process starts, it is expected to take about 27 months. What safeguards will EPA put in place to ensure that more damage to the cap does not occur before the removal can be completed?

8. Administrator Pruitt, in October you announced a new policy of the Agency regarding the use of settlements to circumvent the regulatory process and indicated that EPA "will no longer go behind closed doors and use consent decrees and settlement agreements to resolve lawsuits filed against the Agency." The issue of "sue and settle" and the ability of special interest groups to use deadline lawsuits to force EPA to issue regulations that advance their priorities on a specified timeframe has long been a concern of this Subcommittee.

    a. As you noted in your statement about the new policy, "'sue and settle' cases establish Agency obligations without participation by states and/or the regulated community; foreclose meaningful public participation in rulemaking; effectively force the Agency to reach certain regulatory outcomes; and, cost the American taxpayer millions of dollars." Has the Agency started implementing the changes?

    b. There has been some pushback on your sue and settle proposal. How do you respond to the people, many of whom are former EPA attorneys, who say that the policy "discourages settlements when they would have been appropriate and increases agency costs?"

    c. How do you differentiate between the negative aspects of sue and settle [lack of transparency etc…] and the positive? For example, regulated entities and EPA often reach agreement on a cleanup or enforcement issue, enter a settlement, and then file a lawsuit seeking court approval and enforcement of the settlement. Is your new "sue and settle" policy agency-wide? And is it a mandate to not use sue and settle in ways that shorten the administrative time it takes to get a cleanup or resolution of an enforcement action?

9. When was the last time EPA listed a Federal facility on the National Priorities List (NPL)?

a. If a site scores high enough to rank on the Hazard Ranking System (HRS), will EPA list the Federal facility on the NPL?

b. How does OMB factor into the decision about whether to list a Federal facility on the NPL?

c. What if a Federal facility ranks on the HRS and the State in which it is located requests that the Federal facility be added to the NPL, will EPA list the Federal facility?

10. How do you reconcile Executive Order 12580 when it gives the polluter who is also the person paying for the cleanup, the right to make all of the decisions with respect to the remedy with no oversight from EPA?

11. How will EPA build consistency into how the Regions manage CERCLA cleanups?

12. What is the timing for the issuance of the Record of Decision for the Westlake Landfill in Bridgeton, Missouri?

13. The Superfund Task Force conducted a 30-day review of the program and released 42 recommendations in July. The Task Force reemphasized long accepted concepts that are necessary to ensure remedies are consistent nationwide, data-driven, and efficient – such as adaptive management, early actions, technical oversight, and strengthening partnerships with stakeholders. You also revised the delegation of authority procedures to require that remedies potentially totaling more than $50 million must receive approval from the Administrator, which will help promote regional accountability.

    a. How have you been implementing the recommendations of the Task Force at sites with existing Records of Decision and how will you implement the recommendations with new cleanups?

    b. How will EPA ensure that Regional offices closely follow the principles set forth by the Agency's 2005 Sediment Guidance and the National Contingency Plan?

    b. Since many of the Task Force's recommendations require further action, what is your timeline and plan for next steps?

<u>The Honorable David McKinley</u>

1. Mr. Administrator - when EPA finalized the "coal ash" regulations, they adopted in the self-implementing rule a "one-size-fits-all" approach that does not allow for the consideration of site specific, risk-based factors.

   I appreciate that EPA has committed to reconsider elements of the rule.

The timing of these revisions is critical to ensure that the power sector has regulatory certainty.

a. Can you provide an update on how this process is going?

2. As you know, a federal district court ordered EPA in January this year to begin to implement section 321 of the clean air act. This provision from the late 1970s provides that the administrator "shall conduct continuing evaluation of potential loss or shifts in employment…"

   a. What are your plans for implementing this provision? What can you tell us about your timeline?

   b. Will you work with me to identify whether statutory changes will help make for a more useful and transparent section 321 program?

3. Small refineries have an inherent hardship in complying with the renewable fuel standards. These refineries do not have the ability to pass the rin cost on to their customers. It would put them at a competitive disadvantage to do so.

   Congress has clearly stated its intent regarding this.

   a. What is the agency doing to address streamlining and improving the hardship petition process?

4. Mr. Administrator – we understand that one of your objectives at EPA is a revised federalism, including providing the states with a greater partnership role with EPA in administering and implementing environmental laws in the respective states. Congress' recent enactment of the wiin act – which allows the states to implement the federal coal combustion residual – or "coal ash" – rules in lieu of the federal rule – is a perfect example of this philosophy and provides your administration with the opportunity to put this goal into action.

   Unfortunately, however, we have heard from some of the states that EPA has been slow in reviewing and approving state program applications to operate the ccr rule in lieu of EPA. Indeed, we understand that not a *single* state application has been deemed complete by EPA, which is necessary to allow for the formal review process to begin.

   a. Can we get some assurances from you that the agency will accelerate this process?

5. The EPA's Air Enforcement Division sent an October 17 letter to the Ozone Transport Commission stating it "agrees that the 1986 [aftermarket catalytic converter emissions] policy is outdated." We encourage you to look into this issue. U.S. manufacturing jobs are threatened and U.S. consumers are already being harmed by this outdated policy.

   Are you aware of how U.S. manufacturers of aftermarket catalytic converters are being severely impacted by an outdated EPA policy guidance that guides the industry?"

The Honorable Marsha Blackburn

1. An Obama-EPA rule from 2016 would have required glider kit vehicles – which are made with *old* engines, and are not new vehicles – to comply with Phase 2 EPA greenhouse gas emission standards that were targeted solely for *new* vehicles and engines. This rule would have had a devastating impact on the state of Tennessee, resulting in a loss of $512 million-dollars in economic output and a loss of 947 jobs. The rule would have been particularly harmful for small businesses that create and sell refurbished trucks using glider kits, providing an alternative in the medium and heavy-duty truck market that is 25% less expensive than buying a new truck. Mr. Pruitt, I want to thank you on behalf of the hundreds of Tennesseans who still have their jobs because of your common-sense action to reverse the previous administration's meritless and radical position.

    a. Following up on that, do you agree that the needs of small business job creators should be taken into account when setting regulations that impact industries dominated by small businesses?

    b. What can we do as a legislative body to ensure future abuses such as these do not take place again?

    c. Can you discuss some of your efforts to reconsider regulations that pose an undue burden on small businesses?

2. In accordance with the President's Executive Order 13777, your Agency began a process of reviewing EPA regulations in need of reform because they eliminate or inhibit job creation, are outdated, ineffective, or unnecessary, impose costs that exceed benefits, or create legal inconsistencies.

    a. What is the status of this review?

    b. What are your planned next steps?

    c. What timeline do you envision for implementing the recommendations?

3. On November 30, 2017, EPA finalized volume requirements under the Renewable Fuel Standard (RFS) program for 2018 for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel, and biomass-based diesel for 2019. The 2007 law shaping the RFS required EPA to study and report to Congress on whether the RFS will adversely impact air quality. To date, EPA has never completed that study. EPA was also required to report to Congress on the RFS' impacts to the environment and resource conservation every three years. To date, EPA has issued only one report – in December 2011. Administrator Pruitt, when can Congress expect the EPA to comply with the law and provide the necessary studies?

The Honorable Gregg Harper

1. Mississippi is home to a significant forest products industry. The EPA, under the Obama Administration, drafted and imposed a wood products procurement regulation that allows only for Forest Stewardship Council – or FSC – certified products to be purchased by the government, which bars the purchase of products certified by other credible forest certification standards, such as the American Tree Farm System (ATFS) or Sustainable Forestry Initiative. This regulation, which is now under review, excludes a significant number of family forest owners in the United States with homegrown products certified by other reputable standards. 1) Could you please provide a status update on the current review process? 2) What potential changes can be made to improve this policy that currently puts American forest owners at a disadvantage?

2. In the 113th Congress, EPA was provided discretion over the allocation of approximately $12.7 million in annually appropriated EPA technical assistance funding. The EPA used the discretion to eliminate the two full-time circuit rider technical assistance positions in Mississippi and other states. In response to concern raised by my rural and small community water constituents, I introduced legislation to reauthorize and direct the technical assistance funding to where it is most helpful. Senator Wicker's companion bill was signed into law in 2015. I appreciate EPA's July 25, 2017, response to a June 9, 2017, Senate letter in which EPA committed to following the intent of the Grassroots Rural and Small Community Water Systems Assistance Act (PL 114-98). 1) Could you please provide an update on implementation of the law and the possibility of the two-full time circuit rider technical assistance positions being re-established in Mississippi?

The Honorable Bill Johnson

1. As is true in a lot of areas around the country, job creators in my district are having a difficult time obtaining New Source Review air permits in order to build or upgrade manufacturing facilities or power plants, which is hurting our local economy and employment opportunities. And, as the recent DOE report on electricity markets and grid reliability further emphasizes, "NSR creates an unnecessary burden that discourages… investments in efficiency because of the additional expenditures and delays associated with the permitting process".

    a. Do you agree that issuing New Source Review permits takes too long and is unnecessarily complex?

    b. What is EPA doing to assess the impact of current NSR review requirements on decisions to modernize facilities and power plants?

c. What reforms may EPA make administratively to improve the New Source Review permitting program so that we can continue to improve air quality and achieve economic growth?

The Honorable Kevin Cramer

1. After 2022, EPA is required to set volumes for total renewable fuel, advanced biofuel, cellulosic biofuel, and biomass based diesel. The assumption is the total renewable fuel volume would contain some amount of conventional biofuel. The statute, however, does not set a minimum amount for conventional biofuel because it does not specify a minimum volume for the total renewable fuel. Thus, EPA could set the total renewable fuel volume as the same as the advanced biofuel volume.

    a. Does the current statute have a specific requirements for corn-based ethanol until 2022?

    b. Does the statute require a minimum volume of total renewable fuel for each year following 2022?

    c. Is it your belief that after 2022, the RFS gives significant preference to advanced biofuels over conventional corn-based ethanol?

2. The implied mandate for corn-based ethanol is set at 15 billion gallons until 2022. As the statute is written today, do you view this 15 billion gallons as a ceiling or a floor?

    a. If floor: What in the statute leads you to believe the RFS will require more than 15 billion gallons of corn-based ethanol?

3. The prior Administration proposed the Renewable Enhancement and Growth Support (REGS) Rule in 2016 and took comment on the potential for capturing RINS from renewable electricity used to charge electric vehicles.

    a. Where does this proposal currently stand?

    b. Is the EPA planning to continue to finalize the REGS Rule?

4. A number of ethanol producers in my state have talked to me at length about the benefits of high-octane fuels which are said to provide substantial engine efficiency benefits. They indicated a wealth of information has been provided to the EPA in support of such a fuel with 30 percent ethanol.

    a. Can automakers now certify their engines on these fuels?

    b. If not, why not? If so, what is the process?

The Honorable Tim Walberg

1. Administrator Pruitt, one of the priorities of this Subcommittee has long been to, where appropriate, give more authority to the states and it has been suggested that there are aspects of the Superfund program that would be better handled by the states.

    a. What are your thoughts on delegating portions of the CERCLA cleanup authority to states that can demonstrate the ability to conduct certain superfund cleanups?

2. At present, there are no standard EPA methods for analyzing PFAS in environmental media, but EPA officials have stated the agency will have draft methods for water and solids by fall 2017. For the purpose of Michigan's continued engagement on this critical issue, as well as the betterment of EPA's developing approach to addressing PFAS nationwide, when do you expect these methodologies will be complete?

3. The EPA issued a drinking water health advisory for PFAS in May 2016, however, the advisory is non-enforceable and non-regulatory. Do you foresee changes to EPA's role in regulating PFAS contamination at the national level?

4. In the Motor Fuels Act of 1988 Congress established a variety of alternate fuel incentives to be used by NHTSA in the administration of the CAFE fuel economy regulations. EPA originally used the same statutory incentives as NHTSA therefore vehicle emissions and fuel economy incentives were harmonized. But in 2012, under the previous administration, EPA diverged from this harmonization by favoring electric vehicles over other alternative fuel vehicles thereby nullifying Congressional intent. Do you think it would be good policy for EPA to return to its previous approach and harmonizing its emissions incentives with NHTSA's fuel economy incentives?

The Honorable Buddy Carter

1. The EPA issued a review of the Phase 2 Greenhouse Gas Rule for Medium and Heavy-Duty Trucks and in November the EPA issued a statement on the review of glider kits. However, we haven't seen any announcements about progress with truck trailers. Are you currently reviewing trailers as part of the rule and if so, what is the status? Please provide an update on the rulemaking process and any progress that has been made.

2. Which recommendations from the Super Fund Task Force have been implemented?

3. The EPA recently announced the full or partial removal of Superfund sites from the National Priorities List. How many cleanups will the EPA pursue in 2018 and what will those be?

4. In June, the EPA announced an interim remedy for the Superfund site located at Terry Creek in my district. What is the status of that effort?

5. This committee has been looking to make sensible reforms to the program. Are there any legislative actions that this committee would need to take to aid in reforming the program?

The Honorable Michael Burgess

1. In my State of Texas, we have become too familiar with the EPA making examples of a few people to scare everyone else into compliance. Could you explain why you are intentionally moving away from heavy handed regulatory treatment and moving more toward building partnerships with States and industry to improve the environment?

2. Some of your critics view the EPA as if it's a factory; where success is measured by the quantity of rules issued, grants passed out, or enforcement cases brought. Rarely do people size up EPA by compliance achieved or improvements in the environment. What goals, budgetary or otherwise, are you setting for individual programs and what metrics are being used to measure progress or success of an office or program?

3. I'd also like to touch on the spill at the Gold King Mine. Shortly after the spill occurred there, I visited the mine to observe the impact myself and was shocked by the severe the damage was at that time. Could you please provide me an update on the situation there and the status of the claims brought by the victims?

4. EPA's authority to use the Title 42 hiring authority derives from an appropriations rider and not legislation originating from either the House Energy & Commerce or Senate Environment & Public Works Committees. Does the EPA intend to continue to use Title 42 to hire and pay new and existing employees under this authority?

    a. Does EPA intend to formally ask the authorizing committees for special hiring authority or will it continue to base its authority on the appropriations rider?

    b. Has EPA ever formally or informally requested such authority from the authorizing committees? If so, when?

    c. Has the EPA ever proposed language similar to the Title 42 hiring authority be included in any of its authorizing legislation?

    d. Does EPA intend to continue to request that the Appropriations Committee include this rider in future appropriations legislation?

    e. Does EPA intend to ask the Appropriations Committee for any increase to the currently allowed number of employees it may pay under Title 42?

The Honorable Frank Pallone

Superfund:

During the hearing, you suggested that you proposed cutting the budget for Superfund cleanups because more money is not needed. You also said that there are very few orphan sites, meaning sites that will require public cleanup funds. However, in 2015, the Government Accountability Office found that as federal funding for cleanups has declined, the number of construction

completions and remedial action completion declined while the number of National Priority List sites remained constant. In other words, less money buys fewer needed cleanups.

1. How many sites, exactly, on the National Priority List require public cleanup funds?

Environmental Justice:

Since the issuance of Executive Order 12898 in 1994, EPA has been required to incorporate the goal of environmental justice into its mission. As part of that executive order, and in keeping with Title VI of the Civil Rights Act of 1964, EPA is required to ensure all of its activities that affect human health and the environment do not directly or indirectly discriminate on the basis of race, color, or national origin.

2. What are you doing to ensure that EPA's response and recovery efforts in Puerto Rico and the U.S. Virgin Islands comply with the Executive Order on environmental justice and the Civil Rights Act?

Environmental justice is also a serious concern in the Agency's response to Hurricane Harvey because of disparities between communities affected by that storm.

3. What have you been doing to ensure that EPA's response and recovery efforts in Texas comply with the Executive Order on environmental justice and the Civil Rights Act?

4. What direction, if any, have you given to your Regional Administrators and other regional staff with regard to ensuring environmental justice in EPA's hurricane response? Please provide any memoranda or email correspondence you or your staff have sent to regional staff on the subject of environmental justice and hurricane response.

5. Who on your staff is tasked with coordinating response efforts across the regions to ensure equal treatment for the people of Puerto Rico and the U.S. Virgin Islands?

Since assuming your position as Administrator, you have delayed or abandoned numerous rules and regulations that would have protected vulnerable communities.

6. Do you believe that your decision to abandon EPA's proposed ban of the dangerous pesticide chlorpyrifos complies with the Executive Order on environmental justice and the Civil Rights Act?

7. Do you believe that your decision to delay the important amendments to the Risk Management Planning program complies with the Executive Order on environmental justice and the Civil Rights Act?

8. Do you believe that your actions delaying notifying communities that are out of attainment with the 2015 ozone National Ambient Air Quality Standard complies with the Executive Order on environmental justice and the Civil Rights Act?

9. Do you believe that your decision to repeal the Clean Power Plan complies with the Executive Order on environmental justice and the Civil Rights Act?

10. Do you believe that your decision to delay revisions to the Lead and Copper Rule complies with the Executive Order on environmental justice and the Civil Rights Act?

Management of Toxic Pesticides:

11. Documents reveal that Monsanto employees may have ghostwritten scientific papers on glyphosate, including papers published in the journal Regulatory Toxicology and Pharmacology, which has an editorial board populated by industry scientists, lawyers and consultants with clear financial ties to the chemical industry. Has EPA relied on those studies in its evaluation of glyphosate?

12. Did EPA rely on studies from that journal in its decision to deny the petition to ban chlorpyrifos?

13. In 2015, the Food and Drug Administration (FDA) agreed with recommendations from GAO[1] that glyphosate monitoring should be done, but subsequently suspended its efforts to conduct that monitoring.[2] Documents suggest that this decision may have been made under pressure from an EPA employee working with Monsanto. Please provide any email or other correspondence between EPA employees and FDA employees regarding glyphosate monitoring.

14. EPA's March 30 decision on chlorpyrifos will allow continued use of this dangerous pesticide on golf courses. Did trade associations representing the Trump Organization golf courses, or lobbyists who represent the Trump Organization, communicate with EPA, the White House, or the Trump transition team regarding the March 30 decision or chlorpyrifos in general?

Transparency:

Nearly thirty-five years ago, in his landmark "Fishbowl Memo," Administrator Ruckelshaus announced that he would release his appointment calendar on a weekly basis, and he directed the Deputy Administrator and all Assistant Administrators, Associate Administrators, Regional Administrators, and Staff Office Directors to do the same. Administrator Ruckelshaus emphasized that "EPA will not accord privileged status to any special interest group" and that the public should be "fully aware of [top officials'] contacts with interested persons." In the intervening decades, Administrators serving under both Democratic and Republican Administrations have upheld this

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[1] U.S. Government Accountability Office, "Food Safety: FDA and USDA Should Strengthen Pesticide Residue Monitoring Programs and Further Disclose Monitoring Limitations" (Nov. 6, 2014).

[2] Gillam, C. *FDA Suspends Testing for Glyphosate Residues in Food* (Nov. 11, 2016) (http://www.huffingtonpost.com/carey-gillam/fda-suspends-glyphosate-r_b_12913458.html)

practice. But your senior management team has yet to release its calendars, undermining agency transparency and raising questions about who may be accessing and influencing top EPA officials. EPA has recently provided the public with a "summary" of your calendar, and provided some heavily redacted records of your calendar through March 31. But the agency still has not released the actual records of your daily calendars since March, despite numerous FOIA requests for them.

15. Will you commit to making your schedule public on a regular basis, so that Congress, the press, and ordinary Americans can see who you are meeting with?

16. Will you commit to directing your senior officials to release their calendars on a regular basis?

We are also concerned about delays in EPA's response to FOIA requests under your administration. EPA's failure to meet the deadlines specified in the Freedom of Information Act results in legal violations, which then subject EPA to repeated lawsuits.

17. Given the legal expenses and waste of resources caused by EPA's failure to comply with FOIA deadlines, do you agree that EPA should streamline the review process for release of documents to eliminate any unnecessary steps, such as multiple levels of document review?

18. Do you this it is appropriate for political appointees and advisors to hold up the release of document for further review, even when documents have already been determined to be public documents not subject to FOIA exemptions by FOIA officers and FOIA attorney advisors?

19. Why would it be necessary for the documents to undergo a political review if they are public documents under the law?

20. It appears that EPA has now adopted a policy of responding to FOIA requests based only or primarily on the date of the request, regardless of the type of information requested, the simplicity of the request, or the relevance of the information to the public. Is that correct?

21. If not, please describe in detail the criteria that EPA is now using to prioritize processing FOIA requests?

22. Given EPA's large backlog, under your current approach, how long will it be before you respond to a substantial number of requests regarding your tenure and release documents generated during your tenure (besides those documents that EPA releases when a lawsuit is filed)? Please provide an estimate in weeks, months, or years.

23. Will you establish a policy of responding to new FOIA requests on an ongoing basis, rather than relegating them to the back of the line and without waiting to be sued on each request?

It has been reported that you and other political appointees have directed staff to avoid creating public records that could be subject to FOIA requests, such as directing staff to provide internal policy decisions orally instead of by electronic mail or directing staff not to take notes in meetings.

24. Do you agree that EPA is required to create and maintain records that document the formulation of the agency's decisions, and the people and matters dealt with by the agency, so that proper scrutiny by Congress and other agencies is possible?

25. Have you or other political employees provided any direction to staff that could discourage them from creating such records?

Contract with Definers Public Affairs:

On the day you testified before Energy and Commerce, EPA entered into a no-bid contract with Definers Public Affairs to provide "news analysis and brief service focusing on EPA work and other topics of interest to EPA."[3] The awarding of this contract without full and open competition to a company with no apparent experience in providing these services to a Federal agency is concerning, as are the political lobbying activities of the firm. Though Definers recently terminated the contract with EPA, we have outstanding questions regarding EPA's selection of Definers and whether the Contract was an appropriate use of taxpayer dollars.

26. What was your role in selecting Definers for this award? In addition to yourself, which EPA political appointees were involved in selecting Definers? Please provide all communications between yourself and all other EPA political appointees and any Definers representative between February 17, 2017 and December 7, 2017.

27. Were you or other EPA political appointees aware of the FOIA requests filed by Definers employees against individual agency employees before the contract was awarded? Were those FOIA requests considered in the identification of Definers as a potential candidate for the Contract, or a factor in ultimately awarding the Contract?

28. Was Definers, AmericaRising, or any of their agents involved in creating or funding the website ConfirmPruitt.com?

29. Were you, any of your agents, or any current EPA employees involved in generating or reviewing the content of the website ConfirmPruitt.com, or providing or raising funds for the site? Did any representative of Definers, America Rising, or America Rising Squared generate or review content for the website?

30. What work did Definers perform for EPA pursuant to the contract? Please provide a list of all services performed by Definers for EPA during the duration of the contract, including the date, the service provided, time required, the itemized cost, and the name of the Definers employee who performed the work. What was the total amount of taxpayer funds EPA paid Definers during the duration of the contract? Please provide copies of all communications between EPA and any representative of Definers, America Rising, America Rising Squared, and the Need to Know Network during calendar year 2017.

[3] EPA Award Number EP18H000025 to Definers Corps. (Dec. 7, 2017)

31. On December 10, the New York Times published an article identifying an alarming decrease in enforcement actions brought by the EPA during your administration.[4] EPA issued an unusual press release in response, which has since been removed from the agency website but continues to be cited by conservative media sources. What role did Definers play in the agency's response to the December 10th article? Provide any correspondence between EPA and any representative of Definers, America Rising, America Rising Squared, and the Need to Know Network regarding the December 10th article.

32. What firewalls were in place in the contract with Definers Corp to ensure that Definers firewalled the media monitoring services provided under the Contract from its services that would violate the Publicity or Propoganda Prohibition and Anti-Lobbying provisions?

33. Please provide a copy of the contract between EPA and Definers Corp. including any statement of work.

Enforcement:

As noted above, on December 10, the New York Times published an article identifying an alarming decrease in enforcement actions during your administration. Specifically, their analysis shows your EPA has brought one quarter fewer cases than President George W. Bush's EPA and one-third fewer cases than President Barack Obama's EPA over comparable periods. The analysis also shows that you have sought significantly smaller amounts in civil penalties.

34. Can you explain why EPA has pursued fewer enforcement cases under your leadership?

35. Please describe any complaints you have received from communities/others who have been seeking, but apparently failing to receive relief from EPA from polluters?

36. Have you been asked by anyone in industry to change EPA's enforcement policies?

37. If so, please describe those conversations.

38. Can you explain any changes you have made to testing procedures and policies (e.g. requests for information) permitted by your regional offices, enforcement officers or other EPA staff, why those changes were made and what effect they have had on enforcement?

Co-Benefits of Air Rules:

You have questioned EPA's prior evaluations of public health protections that have included "co-benefits" of deadly particulate matter.

39. Do you agree there is judicial precedent upholding EPA's approach to consider co-benefit pollution reductions?

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[4] Eric Lipton and Danielle Ivory, *Under Trump, EPA has Slowed Actions Against Polluters, and Put Limits on Enforcement Officers*, New York Times, (Dec. 10, 2017), https://www.nytimes.com/2017/12/10/us/politics/pollution-epa-regulations.html

40. Why or why not?

41. Are you planning to seek legal review of this matter?

42. Are you planning to try to change the way co-benefits, like PM2.5, are counted or considered in EPA rulemakings?

43. If so, why and what evidence do you have to support such a change?

Ozone:

For the 2015 Ozone rule, the Clean Air Act required all states and Tribes to submit attainment designation recommendations by October 1, 2016, and EPA was required to finalize area designations a year after. On November 6, the agency issued attainment designations for those areas that meet the 2015 standard, however EPA failed to release any nonattainment designations. In response to questions about EPA missing deadlines associated with the 2015 Ozone rule, you said the delay was due to "information that has not been provided by the states."

44. Please provide a list of all states or Tribes who have not submitted designation recommendations to EPA for the 2015 Ozone standard. What information is still outstanding from these states or Tribes?

45. To date, has EPA notified any states or Tribes that it intends to modify any of their recommended designations? Please provide the Committee with a list of these states or Tribes, and copies of the notice provided by EPA.

46. Have you been in contact with any industry representatives or states about delaying the implementation of the 2015 Ozone standard as it relates to finalizing the remaining designations? If so, please describe the nature of your meetings and communications.

47. The Unified Regulatory Agenda included a reference to using "additional time afforded by the designations extension to finalize necessary guidance" related to the 2015 Ozone standards. However, after legal challenges from states and others, you walked back your effort to delay implementation of these standards.

    a. Can you clarify what "extension" this refers to in the Unified Agenda?

    b. Why would EPA need an extension to issue remaining designations?

48. When can we expect EPA to issue the remaining designations?

49. Who is on the Ozone Compliance Task Force, and what is its roll in implementing the 2015 Ozone standard? Please provide the Committee with a list of participants, schedule, meetings, materials, and communications.

Climate Change:

50. Federal courts have held that the quantity of emission reductions to be achieved is an important consideration in determining the "best system of emission reduction" for sources under section 111 of the Clean Air Act. What weight will you give to achieving significant emission reductions in considering a replacement for the Clean Power Plan?

At the hearing you questioned the integrity of the rulemaking that led up to EPA's December 2009 science-based finding that greenhouse gas pollution endangers public health and welfare. As you know, EPA received over 380,000 comments on the Endangerment Finding, responded to 10 petitions for reconsideration, and explained its determination in almost one thousand pages of documentation in the Federal Register and supporting technical documents. A three-judge panel of the D.C. Circuit unanimously upheld that finding in 2012 against a barrage of legal challenges, finding that it was supported by ample evidence and that EPA had appropriately relied on authoritative analyses by the Intergovernmental Panel on Climate Change, the U.S. government and other sources.

51. Please explain why you continue to question the process that led to the Endangerment Finding in light of this history and the D.C. Circuit's decision?

You recently stated that you intend to move forward imminently with a so-called "red team" exercise in which you will convene rival panels of scientists to debate climate science, just weeks after the Administration's Global Change Research Program released a "Climate Science Special Report" confirming that human activities are "the dominant cause" of observed climate change, and that climate change is already having adverse impacts around the country. This report was authored by scientists from multiple Federal agencies, national laboratories, universities, and the private sector, and went through six stages of external review including review by the National Academies of Sciences, Engineering, and Medicine and an open public comment period.

52. Please explain why the "red team" exercise a good use of scarce Agency resources in light of the extraordinary research and review that the Administration invested in the CSSR?

Budget:

It was recently reported that officials at the Center for Disease Control and Prevention are being directed to not use seven words or phrases in official documents for the FY 2019 Budget. The forbidden words are "vulnerable," "entitlement," "diversity," "transgender," "fetus," "evidence-based" and "science-based."

53. Is EPA also barred from using "vulnerable," "entitlement," "diversity," "transgender," "fetus," "evidence-based" or "science-based," in official budget documents?

54. Does EPA have a list of forbidden words or phrases for official budget documents? If so, please provide the Committee with such list.

EPA has been experiencing a workforce reduction, including through the use of buy-outs.

55. Please detail the status of workforce reductions conducted to-date, during this administration, including overall net personnel reductions?

56. In what offices and programs have net reductions occurred?

57. Please detail the categories in which workforce reductions have occurred in 2017, such as buy-outs, other voluntary separations, reductions-in-force, etc.

58. In 2018, what additional workforce reductions are planned, assuming funding is available to accomplish them?

59. In which programs and offices are reductions planned?

60. What closures or other changes to the current EPA regional offices or labs are planned for 2018 or beyond?

The Honorable Paul Tonko

1. **Travel to Morocco**

On December 12, EPA issued a press release, "Administrator Pruitt Promotes Environmental Cooperation with U.S. Partners in Morocco." While no members of the press accompanied you on this trip, it was reported that the purpose of the trip was to promote U.S. natural gas exports.

a. Please provide an itinerary of your trip along with total estimated costs to U.S. taxpayers for you and any accompanying staff, including security details.

b. How does promoting U.S. LNG exports fit into your "Back to Basics" agenda?

c. What authority does EPA have related to the exportation, sale, or promotion of U.S. LNG?

d. Please provide a list of companies, trade associations, or natural gas industry representatives that you or your staff have been in contact with regarding U.S. LNG exports. Please provide all records, communications, emails, meeting attendance or materials for any of these interactions.

e. This trip was not publicly announced until EPA issued a press release once you had already arrived in Morocco. Moving forward, will you commit to publicly announcing all foreign and domestic trips prior to traveling?

2. **Science at EPA**

In the draft FY 2018-2022 EPA Strategic Plan, you have promised to "prioritize robust science." Under Objective 3.3 of the draft plan, you say that "EPA will identify, assess, conduct, and apply the best available science to address current and future environmental hazards, develop new approaches, and improve the scientific foundation for environmental protection decisions."

a. Do you commit to ensuring that the EPA's actions and policies are guided by the latest climate science, as reflected in Volume 1 of the Fourth National Climate Assessment

(also known as the Climate Science Special Report or CSSR), and as described in statements and reports from the National Academy of Sciences?

b. Do you agree with the CSSR's conclusion that "it is *extremely likely* that human influence has been the dominant cause of the observed warming since the mid-20th century… For the warming over the last century, there is no convincing alternative explanation supported by the extent of the observational evidence"?

c. Do you commit to making information about climate change prominently available on the EPA's website, alongside information about other critical issues related to human health and the environment?

d. Regarding the October 31 Science Advisory Board directive, can you please provide specific examples of when an EPA grant recipient on an advisory committee provided conflicted advice?

e. On October 22, the New York Times reported, "E.P.A. Cancels Talk on Climate Change by Agency Scientists." Why were EPA scientists prohibited from speaking at a Rhode Island conference on climate change?

f. Moving forward, will EPA scientists have the opportunity to communicate publicly about their research?

3. **Advisors to the Administrator**

On December 13, it was reported that Dr. Michael Dourson withdrew his name to serve as Assistant Administrator for the Office of Chemical Safety and Pollution Prevention.

a. In October, it was reported that Dr. Dourson was already working at the agency as an Adviser to the Administrator. Can you confirm whether Dr. Dourson has left the agency?

b. If not, what are the roles and responsibilities of Dr. Dourson?

c. What ethics or conflict of interest agreements apply or applied to Dr. Dourson in his role as Advisor to the Administrator?

d. You testified that the October 31 Science Advisory Board directive was driven by a concern that "a perception or an appearance of a lack of independence in advising the Agency." Did any EPA leadership have a conversation or express concerns about the perception of conflict of interest from Dr. Nancy Beck's involvement in revising the TSCA framework rules after leaving a position with the American Chemistry Council?

4. **Enforcement Actions and Monitoring**

On December 10, the New York Times reported that EPA regional staff must seek authorization from HQ before asking companies to track their emissions. Monitoring is critical to ensure that

the environmental and health gains that have been made in recent decades are not undone. Power generating facilities in the Midwest emit sulfur dioxide and nitrogen oxides, which are the major precursors of acid rain which has caused the acidification of many Adirondack lakes and ponds.

a. The Adirondack Lake Survey Corporation receives EPA funding for long-term monitoring of water quality recovery from acid rain. Do you support continuation of this long-term monitoring funding?

5. **Hudson River Superfund Site**

The State of New York has stated that the Hudson River PCB cleanup has not met the goals of the program, and that additional action is needed. Federal Natural Resource Trustees have also expressed concerns. The EPA Region II office does not appear to acknowledge the scientific basis of the state's and Trustee's analysis.

a. Will EPA reconsider the recommendations of the Second Five-Year Review Report in light of the analysis done by the State and Trustee agencies?

6. **OIG**

The Office of Inspector General (OIG) Semiannual Report: April 1, 2017 - September 30, 2017 raised a number of issues about interference with the OIG's independence. From that report: "A second budget impediment occurred when the OIG submitted an FY 2019 request for $62 million to the agency for inclusion in the President's budget. Without seeking input from the OIG, the agency provided us with a request of $42 million. The agency informed the OIG that the Office of Management and Budget mandated budget requests Semiannual Report to Congress April 1, 2017—September 30, 2017 13 could not be more than a certain percentage above the President's FY 2018 budget. The EPA also informed the OIG that the $42 million request would not change. The OIG submitted a memorandum to the Office of Management and Budget stating the OIG's original budget request, and explaining that the EPA's submitted budget did not reflect the OIG's desired funding levels and would have significant negative impacts on OIG operations."

a. Do you believe a fully funded, independent Inspector General is necessary for EPA to run as an efficient and accountable agency?

7. **IRIS**

a. How do you view the role of IRIS relative to ensuring full implementation of the TSCA program?

b. Will you commit to fully supporting the IRIS program?

The Honorable Diana DeGette

1. Methane is up to 34 times more potent a greenhouse gas than carbon dioxide and makes up approximately ten percent of annual greenhouse gas emissions in the United States. Despite the harm methane can cause, the EPA has proposed delaying rules that would have curbed methane emissions from oil and gas industry sources. The proposed delay of the 2016 methane rule published in the Federal Register on June 16, 2017, states "the EPA believes that the environmental health or safety risk addressed by this action may have a disproportionate effect on children."

    a. Do you agree that children would be disproportionately affected by delaying methane emissions restrictions on the oil and gas industry?
    b. What are the estimated costs of the health impact on children?

2. During your testimony we discussed the decision on a final rule concerning methylene chloride use in paint stripper. You promised to review the status of the rule and provide an update soon after the hearing. Rules concerning N-methylpyrrolidone (NMP) and trichloroethylene (TCE) were proposed at the same time. Prohibitions against certain uses of NMP and methylene chloride were removed from the Fall 2017 Unified Agenda of Regulatory and Deregulatory Actions.

    a. The Fall Unified Agenda was released on December 14, one week after your testimony before the committee. At what point was the decision made to remove the NMP and methylene chloride rules from the Unified Agenda?

    b. When will EPA finalize the rules for TCE, NMP, and methylene chloride under TSCA?

    c. What role did Michael Dourson have as an EPA adviser in determining the timeline for these rules?

3. In response to the explosion at the West Fertilizer Plant in Texas in 2013, EPA developed updates (the "Chemical Disaster Rule") to Risk Management Plans (RMP) requirements. This update would have included common sense reforms, including improved accident prevention provisions and enhancements to emergency response preparation. In June 2017, the implementation of this rule was delayed. The rule had been in development for three years and was subject to more than 40,000 public comments.

    a. During Hurricane Harvey, the Arkema Chemical plant in Crosby, Texas, experience fires due to a failure of emergency generators and backup cooling systems. First responders have filed suit against Arkema alleging that Arkema misrepresented the threat posed by chemicals at the site. A situation like this, where first responders cannot adequately prepare to respond to emergencies at chemical production facilities, is the sort of circumstances that the Chemical Disaster Rule was designed to avoid. Have the events at the Arkema plant, where first responders were put at risk, caused you to reconsider the delay of the Chemical Disaster Rule?

b. The proposed EPA budget for fiscal year 2018 reduced funding for inspection of sites under the RMP by 35 percent, straining a program that only has 30 inspectors for 12,500 sites. In light of the number of facilities that need to be inspected, the low frequency of inspection, and the specter of climate change related extreme weather events like Hurricane Harvey, do you still feel the cuts to the inspection program are prudent?

4. The Climax Molybdenum Mining company in Colorado has asked the state of Colorado to relax limits on molybdenum allowed in runoff from the Climax mine in Summit County Colorado. Molybdenum is on the Contaminant Candidate List 4 (CCL-4). It was also on the CCL-3. Currently, states have minimal guidance from the EPA on the potential hazards of molybdenum in drinking water.
   a. Is EPA currently collecting data on the health or environmental impacts of molybdenum in drinking water?

   b. Will molybdenum be part of the Regulatory Determination 4 process going forward?

5. For more than two years, I have been focused on addressing the environmental damage caused by the August 2015 release of toxic mine water from Gold King mine in San Juan County, Colorado.

   a. I was glad to see the Bonita Peak Mining District (which includes Gold King mine) was included on the list EPA released on December 8, 2017, of sites targeted for "immediate, intense action." Can you elaborate on the action EPA plans to take in the Bonita Peak Mining District and the expected timeline?

   b. On December 17, 2017, the *Denver Post* reported on the success of cleanup efforts related to toxic Argentine Mine complex near Rico, Colorado. The article noted that the part of the success is that the private company legally responsible for cleaning up the site has invested "tens of millions of dollars" in the cleanup compared to less than $5 million the EPA has invested in the cleanup of Gold King. What additional funding will EPA invest in the Gold King cleanup?

   c. On October 19, 2017, the *Denver Post* reported that there is uncertainty regarding the ongoing costs association with the water treatment plant EPA is operating to clean up water from Gold King Mine. The annual cost of operating the plant is $1.2 million and it produces toxic sludge while purifying the runoff. What is the EPA's long-term plan for the plant costs?

   d. What is the status of finding a permanent solution for the waste sludge from the plant?

The Honorable Jerry McNerney

1. At the December 7th hearing, I stated that less than half of the U.S. population was included in the ozone designations laid out by the EPA. Though this statement was not made in the form of a question, Administrator Pruitt interjected, proclaiming that the lack of inclusion was due to missing information that needs to be submitted by states. However, on the EPA's website, there is a full list of state recommendations from 2015. Will the Administrator please explain his statement and what information is missing from which states?

1-25-2018

Draft Responses to FOIA-Related QFRs from 12/7/2017 House Environment Subcommittee Hearing

Ex. 5 AC/DP

17. Given the legal expenses and waste of resources caused by EPA's failure to comply with FOIA deadlines, do you agree that EPA should streamline the review process for release of documents to eliminate any unnecessary steps, such as multiple levels of document review?

Ex. 5 AC/DP

18. Do you [that] it is appropriate for political appointees and advisors to hold up the release of document for further review, even when documents have already been determined to be public documents not subject to FOIA exemptions by FOIA officers and FOIA attorney advisors?

Ex. 5 AC/DP

19. Why would it be necessary for the documents to undergo a political review if they are public documents under the law?

Ex. 5 AC/DP

20. It appears that EPA has now adopted a policy of responding to FOIA requests based only or primarily on the date of the request, regardless of the type of information requested,

the simplicity of the request, or the relevance of the information to the public. Is that correct?

Ex. 5 AC/DP

21. If not, please describe in detail the criteria that EPA is now using to prioritize processing FOIA requests?

Ex. 5 AC/DP

22. Given EPA's large backlog, under your current approach, how long will it be before you respond to a substantial number of requests regarding your tenure and release documents generated during your tenure (besides those documents that EPA releases when a lawsuit is filed)? Please provide an estimate in weeks, months, or years.

Ex. 5 AC/DP

23. Will you establish a policy of responding to new FOIA requests on an ongoing basis, rather than relegating them to the back of the line and without waiting to be sued on each request?

Ex. 5 AC/DP

Message

From: Moser, Rebecca [Moser.Rebecca@EPA.GOV]
Sent: 1/25/2018 5:12:11 PM
To: Johnston, Robert [Johnston.Robert@epa.gov]; Youngblood, Charlotte [Youngblood.Charlotte@epa.gov]; Blake, Wendy [Blake.Wendy@epa.gov]; Miller, Kevin [Miller.Kevin@epa.gov]; Ellis, John [Ellis.john@epa.gov]
CC: Shenefiel, Pam [shenefiel.pam@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]
Subject: FW: FOIA QRS in Follow-up to 12-7-2017 House Env Subcomm Hearing
Attachments: NRMP Response to Q24 and Q25.docx

Robert & John:

Thanks so much for the quick work on these Records Management QFRs. I'm sending them on to OGC for their review.

Wendy, Charlotte & Kevin:

Please review the QFR attached responses to the Records Management questions. We have included supporting information for reference, but would probably just send the short answers back to OCIR. Please let us know as soon as you can if you're okay with the short responses and if you'd like to provide additional supporting information, please suggest specific additions. Thank you!

Note: the draft responses to the FOIA questions will be coming to you separately in a little while.

Thank you.

Rebecca

Rebecca G. Moser
Director, Office of Enterprise Information Programs
Office of Environmental Information
U.S. Environmental Protection Agency
Phone: 202-566-0252

From: Johnston, Robert
Sent: Thursday, January 25, 2018 11:56 AM
To: Moser, Rebecca <Moser.Rebecca@EPA.GOV>; Ellis, John <Ellis.john@epa.gov>
Subject: FW: FOIA QRS in Follow-up to 12-7-2017 House Env Subcomm Hearing

Thank you, John.

Rebecca, John and I worked through the answers to the subcommittee questions, which are attached. John provided a brief response and supporting information for your consideration.

Robert
"Nobody cares how much you know, until they know you care about them!" Zig Ziglar

Robert Johnston, Director, Enterprise Records Management Division | EPA Office of Environmental Information
1200 Pennsylvania Ave NW, MC 2821T (Mail) | 1301 Constitution Ave NW, Room 6143H (Courier) | Washington, DC 20460
(P) 202-566-1637 | (C) 202-744-1741

Message

From: Fine, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D28C9693C45C41E8A941BC51D2C4914C-FINE, STEVE]
Sent: 1/26/2018 4:01:46 PM
To: Jones-Parra, Lisa [Jones-Parra.Lisa@epa.gov]
Subject: RE: FOIA QRS in Follow-up to 12-7-2017 House Env Subcomm Hearing
Attachments: FOIA QFRs from 12-7-2017 House Env Subcomm - Draft 1-24-2018v2 - clean copy.docx

Hi Lisa,

Thanks. I have attached some quick comments. I'm happy to discuss later if needed.

Steve

From: Jones-Parra, Lisa
Sent: Friday, January 26, 2018 10:20 AM
To: Fine, Steven <fine.steven@epa.gov>
Subject: FW: FOIA QRS in Follow-up to 12-7-2017 House Env Subcomm Hearing
Importance: High

Hi Steve,

Draft responses are on the Word document currently being reviewed by OGC. I added a third attachment that includes the Record response but please note that OGC owns these responses and OEI was not listed as a responder so this is only additional information that OGC may or may not choose to use.

Thanks

Lisa

Lisa Jones-Parra
Senior Advisor to the Acting Chief Information Officer
Office of Environmental Information
U.S. Environmental Protection Agency
Desk: (202) 566-1157
Cell: (202) 384-2588

From: Moser, Rebecca
Sent: Thursday, January 25, 2018 2:31 PM
To: Blake, Wendy <Blake.Wendy@epa.gov>; Dolph, Becky <Dolph.Becky@epa.gov>; Youngblood, Charlotte <Youngblood.Charlotte@epa.gov>; Miller, Kevin <Miller.Kevin@epa.gov>
Cc: Gottesman, Larry <Gottesman.Larry@epa.gov>; Shenefiel, Pam <shenefiel.pam@epa.gov>; Grogard, Megan <Grogard.Megan@epa.gov>; Jones-Parra, Lisa <Jones-Parra.Lisa@epa.gov>; Byrd, Jonda <byrd.jonda@epa.gov>
Subject: FW: FOIA QRS in Follow-up to 12-7-2017 House Env Subcomm Hearing

Wendy, Becky, Charlotte & Kevin:

Please find attached OEI's draft responses to the FOIA QFRs, in follow-up to the 12-7-2017 House Environment Subcommittee Hearing.
Steve Fine has not yet reviewed these, but has asked to see the final responses before we send them to OCIR.

Please review the attached draft and let us know as soon as you can if you have any edits. Thank you!

Rebecca

Rebecca G. Moser
Director, Office of Enterprise Information Programs
Office of Environmental Information
U.S. Environmental Protection Agency
Phone: 202-566-0252

From: Moser, Rebecca
Sent: Wednesday, January 24, 2018 3:33 PM
To: Blake, Wendy <Blake.Wendy@epa.gov>; Dolph, Becky <Dolph.Becky@epa.gov>
Cc: Gottesman, Larry <Gottesman.Larry@epa.gov>; Byrd, Jonda <byrd.jonda@epa.gov>; Shenefiel, Pam <shenefiel.pam@epa.gov>; Robert Johnston <Johnston.Robert@epa.gov>; Miller, Kevin <Miller.Kevin@epa.gov>; Grogard, Megan <Grogard.Megan@epa.gov>; Jones-Parra, Lisa <Jones-Parra.Lisa@epa.gov>
Subject: FOIA QRS in Follow-up to 12-7-2017 House Env Subcomm Hearing

Wendy & Becky:

I wanted to make sure that you're both in the loop on the QFRs we received from OCIR in follow-up to the Administrator's 12/7/2017 hearing before the House Environment Subcommittee.
Larry touched base with Kevin about the FOIA-related QFRs earlier today, and Larry is now drafting initial responses to the FOIA questions. We'll send the draft responses to you as soon as we have them ready.

Steve wants to review the draft responses before we send them back to OCIR. We're trying to complete this by COB tomorrow.
We'll be back in touch again soon.

Rebecca

Rebecca G. Moser
Director, Office of Enterprise Information Programs
Office of Environmental Information
U.S. Environmental Protection Agency
Phone: 202-566-0252

Appointment

From: Gottesman, Larry [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7B3DBF872F954FBEB950E98C56BDC431-LGOTTESM]

Sent: 12/7/2018 5:04:17 PM

To: Gottesman, Larry [Gottesman.Larry@epa.gov]; FOIA Coordinators [FOIA_Coordinators@epa.gov]; FOIA Coordinators Alt [FOIA_Coordinators_Alt@epa.gov]; FOIA Officers Alt [FOIAOfficers-Alt@epa.gov]; Info Attys [Info_Attys@epa.gov]; Tran, Victoria [tran.victoria@epa.gov]; OGC NFO [OGC-NFO@epa.gov]; Ingram, Earl [Ingram.Earl@epa.gov]; Lubetsky, Jonathan [Lubetsky.Jonathan@epa.gov]; Espinoza, Ana [Espinoza.Ana@epa.gov]; Zipf, Lynn [Zipf.Lynn@epa.gov]

CC: Campbell, Rich [Campbell.Rich@epa.gov]; Armstrong, Kathy [Armstrong.Kathy@epa.gov]; Newman, Maya [Newman.Maya@epa.gov]; Clark, Jacqueline [clark.jacqueline@epa.gov]; Albergottie, Daniele [Albergottie.Daniele@epa.gov]; Azad, Ava [Azad.Ava@epa.gov]; Badalamente, Mark [Badalamente.Mark@epa.gov]; Barnes, Cassandra [Barnes.Cassandra@epa.gov]; Battle, Jernell [Battle.Jernell@epa.gov]; Bunnell, Julia [Bunnell.Julia@epa.gov]; Dalzell, Sally [Dalzell.Sally@epa.gov]; Johnson, Natalie [Johnson.Natalie@epa.gov]; Miles, James [miles.james@epa.gov]; Pettiford, Isabelle [Pettiford.Isabelle@epa.gov]; Powell-Dickson, Antoinette [Powell-Dickson.Antoinette@epa.gov]; Reid, Danesha [Reid.Danesha@epa.gov]; Seaton, Tom [Seaton.Tom@epa.gov]; Spriggs, Gwendolyn [Spriggs.Gwendolyn@epa.gov]; Werner, Jacqueline [Werner.Jacqueline@epa.gov]; Wilson, Dane [Wilson.Dane@epa.gov]; Stoy, Alyse [Stoy.Alyse@epa.gov]; Story, Karen [Story.Karen@epa.gov]; Adkins, Norman [adkins.norman@epa.gov]; McLendon, Wanda [McLendon.Wanda@epa.gov]; Clarke, Victoria [clarke.victoria@epa.gov]; Kaminer, Joan [Kaminer.Joan@epa.gov]; Gardner, Allison [Gardner.Allison@epa.gov]; Wood, Nicole [wood.nicole@epa.gov]; Lao, Judy [Lao.Judy@epa.gov]; Gross, Louann [Gross.LouAnn@epa.gov]; Palmer, Leif [Palmer.Leif@epa.gov]; Allen, Robin [Allen.Robin@epa.gov]; Capel, Susan [Capel.Susan@epa.gov]; Caplan, Robert W. [Caplan.Robert@epa.gov]; Hines, Andrea [hines.andrea@epa.gov]; Johnson, Patrick [johnson.patrick@epa.gov]; Johnson, Priscilla [Johnson.Priscilla@epa.gov]; Jones, LaShandra [Jones.Lashandra@epa.gov]; Luetscher, Greg [Luetscher.Greg@epa.gov]; Mendez, Gayla [Mendez.Gayla@epa.gov]; Rouch, Ellen [Rouch.Ellen@epa.gov]; Wilson, Saundi [Wilson.Saundi@epa.gov]; Cody, Karen [Cody.Karen@epa.gov]; Cruver, Melvin [Cruver.Melvin@epa.gov]; Dangerfield, Leonard [Dangerfield.Leonard@epa.gov]; Patillo, Shayla [Patillo.Shayla@epa.gov]; Pearce, Jennifer [Pearce.Jennifer@epa.gov]; Pressley, Miriam [Pressley.Miriam@epa.gov]; Robinson, Donna [Robinson.Donna@epa.gov]; Woodard-Burrell, Gwendolyn [Woodard-Burrell.Gwendolyn@epa.gov]; Leon, Sandra [Leon.Sandra@epa.gov]; Fritz, Frank [Fritz.Frank@epa.gov]; Bacci, Manuela [bacci.manuela@epa.gov]; Martinez, Doris [Martinez.Doris@epa.gov]; Stanton, Rachel [stanton.rachel@epa.gov]; Williams, LaShawn [williams.lashawn@epa.gov]; Green, LindaE [Green.LindaE@epa.gov]; Edgell, Joe [Edgell.Joe@epa.gov]; Matthews, Julie [Matthews.Juliane@epa.gov]; Barnett-Owens, Inga [Barnett-Owens.Inga@epa.gov]; Stallworth, Deirdre [Stallworth.Deirdre@epa.gov]; Walker, Denise [Walker.Denise@epa.gov]; Kennedy, Chandra [Kennedy.Chandra@epa.gov]; FOIA Officers [FOIAOfficers@epa.gov]; Johnson, Ivry [Johnson.Ivry@epa.gov]; Wheatley, Jessica [wheatley.jessica@epa.gov]; Kirst, Tina [kirst.tina@epa.gov]; Adams, Janet [Adams.Janet@epa.gov]; Bayless, Shirley [Bayless.Shirley@epa.gov]; Bradford, Deanna [Bradford.Deanna@epa.gov]; Brown, Dorothy [Brown.Dorothy@epa.gov]; Donaldson, Yerusha [Donaldson.Yerusha@epa.gov]; Ford, Mark [Ford.Mark@epa.gov]; Gonzales, Kristina [Gonzales.Kristina@epa.gov]; Johnson, LaGayla [Johnson.Lagayla@epa.gov]; Kersey, Ricky [Kersey.Ricky@epa.gov]; Lane, Leticia [Lane.Leticia@epa.gov]; Langley, Shirley [Langley.Shirley@epa.gov]; Morgan, Jeanette [Morgan.Jeanette@epa.gov]; Ortiz, Diana [Ortiz.Diana@epa.gov]; Pemberton, Mary [Pemberton.Mary@epa.gov]; Ragon, Derek [Ragon.Derek@epa.gov]; Rymer, Edwina [Rymer.Edwina@epa.gov]; Sloan, Charlene [Sloan.Charlene@epa.gov]; Thurman, Joyce [Thurman.Joyce@epa.gov]; Trim, JEWELINE [Trim.Jill@epa.gov]; Vasquez, Maria [Vasquez.Maria@epa.gov]; Vaughn, Lorena [Vaughn.Lorena@epa.gov]; Wang, Jonathan [Wang.Jonathan@epa.gov]; Tate, Rita [Tate.Rita@epa.gov]; Calderon, Wanda [Calderon.Wanda@epa.gov]; Stevens, Edie [Stevens.Edie@epa.gov]; Schena, Cristeen [Schena.Cristeen@epa.gov]; Kercheval, Stephanie [Kercheval.Stephanie@epa.gov]; Knapp, Michael [Knapp.Michael@epa.gov]; Brown, Sineta [Brown.Sineta@epa.gov]; Herrema, Jeffrey [Herrema.Jeffrey@epa.gov]; Connery, Shannon [Connery.Shannon@epa.gov]; Gupta, Kaushal [Gupta.Kaushal@epa.gov]; Ho, Nancy [Ho.Nancy@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Levine, Scott [Levine.Scott@epa.gov]; Salisbury, Demetra [Salisbury.Demetra@epa.gov]; Sandfoss, Kristina [Sandfoss.Kristina@epa.gov]; Moumbleaux, Joan [moumbleaux.joan@epa.gov]; Rementer, Nicole [rementer.nicole@epa.gov]; Schumacher, Wendy [schumacher.wendy@epa.gov]; Clausen, Rebecca [Clausen.Rebecca@epa.gov]; Ocampo, William [Ocampo.William@epa.gov]; Pearce, Susan [Pearce.Susan@epa.gov]; Ramsey, Ashley [Ramsey.Ashley@epa.gov]; Susan Hazen [sbhazeninc@verizon.net]; Smith, Susan [Smith.Susan@epa.gov]; Latham, John [Latham.John@epa.gov]; Calvo, Kathy [Calvo.Kathy@epa.gov]; Cestone, Paul [Cestone.Paul@epa.gov]; Frazier,

Sharon [Frazier.Sharon@epa.gov]; Ballard, Darryl [Ballard.Darryl@epa.gov]; Sirmons, Chandler [Sirmons.Chandler@epa.gov]; Sherlock, Scott [Sherlock.Scott@epa.gov]; Hill, Kevin W. [hill.kevinw@epa.gov]; Boydston, Michael [Boydston.Michael@epa.gov]; Engels, Alan [engels.alan@epa.gov]; Aldinger, Dayle [aldinger.dayle@epa.gov]; Joffe, Brian [Joffe.Brian@epa.gov]; Howell, Joyce [Howell.Joyce@epa.gov]; Thompson, Heather [Thompson.Heather@epa.gov]; Thompson, BrianK [Thompson.BrianK@epa.gov]; Hope, Brian [Hope.Brian@epa.gov]; Miller, Kevin [Miller.Kevin@epa.gov]; Price, Lisa [Price.Lisa@epa.gov]; Harrison, Ben [Harrison.Ben@epa.gov]; Hill, Troy [Hill.Troy@epa.gov]; Gilbert, Alexas [Gilbert.Alexas@epa.gov]; Routt, Christiane [Routt.Christiane@epa.gov]; Purifoy, Tiffany [Purifoy.Tiffany@epa.gov]; Hamilton, Denise [hamilton.denise@epa.gov]; Malloy, Marilyn [Malloy.Marilyn@epa.gov]; OGC GLO FOIA Litigation Team [OGC-GLO-FOIA-Litigation-Team@epa.gov]; Kelly, Lynn [Kelly.Lynn@epa.gov]; Buchsbaum, Seth [buchsbaum.seth@epa.gov]; Bermes, Peter [Bermes.Peter@epa.gov]; Hughes, Krista [hughes.krista@epa.gov]; Pratt, Marirose [Pratt.Marirose@epa.gov]; Vander Naald, Breanne [vandernaald.breanne@epa.gov]; HertzWu, Sara [HertzWu.Sara@epa.gov]; Johnson, SusanA [Johnson.SusanA@epa.gov]; Pisarick, Marissa [pisarick.marissa@epa.gov]; Logan, Paul [Logan.Paul@epa.gov]; Schramm, Daniel [Schramm.Daniel@epa.gov]; Stilp, Mark [Stilp.Mark@epa.gov]; Versace, Paul [Versace.Paul@epa.gov]; Scully, Carolyn [Scully.Carolyn@epa.gov]; Robinson, Milton [robinson.milton@epa.gov]; McCool, Catherine [Mccool.Catherine@epa.gov]; Ahmed, Farhana [Ahmed.Farhana@epa.gov]; Jefferson, Tricia [Jefferson.Tricia@epa.gov]; Varilek, Kimberly [Varilek.Kimberly@epa.gov]; Hartman, Bob [Hartman.Bob@epa.gov]; Malooly, Tom [Malooly.Tom@epa.gov]; Blake, Wendy [Blake.Wendy@epa.gov]; Stopper, Nathan [stopper.nathan@epa.gov]; Fleming, Sheila [fleming.sheila@epa.gov]; MacDonald, Jennifer [Macdonald.Jennifer@epa.gov]; Wittenberg, Nicholas [wittenberg.nicholas@epa.gov]; White, Elizabeth [white.elizabeth@epa.gov]; Richardson, RobinH [Richardson.RobinH@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Gary, Gayvonne [Gary.Gayvonne@epa.gov]; Harmon, Stephanie [harmon.stephanie@epa.gov]; Muro, Mark [Muro.Mark@epa.gov]; Rosado, Elizabeth [rosado.elizabeth@epa.gov]; Vernon, Portrice [vernon.portrice@epa.gov]; Weatherspoon, Darlene [weatherspoon.darlene@epa.gov]; Weimer, Noreen [weimer.noreen@epa.gov]; Whitehead, LaDawn [Whitehead.Ladawn@epa.gov]; Wilson, Terri [Wilson.Terri@epa.gov]; Maso, Carmen [maso.carmen@epa.gov]; Marrable, Lanita [marrable.lanita@epa.gov]; Gavin, Megan [gavin.megan@epa.gov]

BCC: DCRoomARN6500PolyPCTB/DC-ARN-OAR [DCRoomARN6500PolyPCTB@epa.gov]

Subject: FOIA Coordinators/Officers meeting
Attachments: FOIA Efficiency Memo.pdf; Awareness Notification e-mail template 11272018 Final (003).docx
Location: DCRoomARN6500PolyPCTB/DC-ARN-OAR

Start: 12/18/2018 6:00:00 PM
End: 12/18/2018 8:00:00 PM
Show Time As: Busy

Call in number 202-991-0477

Conf code 4609930

Message

From: Epp, Timothy [Epp.Timothy@epa.gov]
Sent: 11/8/2018 3:08:26 PM
To: Gottesman, Larry [Gottesman.Larry@epa.gov]
Subject: Awareness SOP needed in OGC -- improper FOIA release
Attachments: [April 20 2018 e-mail] flag foias.pdf; Awareness notification process 10.30.docx

Larry,

On August 8, documents were released to ProPublica on FOIA request EPA-HQ-2008-006330. Those documents included OGC emails containing statements subject to the attorney-client privilege, including one between David Fotouhi and Elise Packard. ProPublica later published an article containing that email in its entirety. Earlier on April 20, Beth White flagged this FOIA request for awareness review (see attached) but it was never flagged in the system and consequently was never reviewed by Beth or others at her level before it was released.

Attached is the new awareness notification process that the Acting Administrator approved this past Monday. The new process is not yet finalized; Wendy is still consulting with DOJ and we are working through the details of dissemination. Thus, we have a short time before it becomes operative; we will need an SOP for running the process here in the NFO to ensure that it is consistently implemented. We will also need to review the OGC FOIA procedures to ensure that no attorney-client or work product communications are released in the future.

You will need to work on this effort and I will seek a volunteer from the NFO staff to work on it as well. Wendy Blake has assigned Peter Bermes to represent GLO on this workgroup. The SOP will need to go through both Wendy and I for approval, and then up through Elise and Joe, and likely ultimately to Matt.

Tim

Timothy R. Epp
Acting Director, National FOIA Office
Office of General Counsel
U.S. Environmental Protection Agency
Tel. 202-564-2830

From: White, Elizabeth
To: Walker, Denise; Gottesman, Larry
Subject: flag foias
Date: Friday, April 20, 2018 5:09:53 PM

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Beth White
Director, Office of the Executive Secretariat
U.S. Environmental Protection Agency
(202) 564-1781 direct
(202) 816-1701 cell

Message

From: Epp, Timothy [Epp.Timothy@epa.gov]
Sent: 11/9/2018 6:48:23 PM
To: Rementer, Nicole [rementer.nicole@epa.gov]; Schumacher, Wendy [schumacher.wendy@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]
CC: Walker, Denise [Walker.Denise@epa.gov]
Subject: Workgroup on OGC's FOIA Procedures
Attachments: Awareness notification process 10.30.docx

Importance: High

Hi Nicole, Wendy, and Larry,

Thank you, in advance, for your work on the OGC FOIA Procedures. Please reach out and pull Peter Bermes into the work on this – GLO assigned him to represent GLO's interests. Please pull together a meeting next week and provide me a projected timeline for completing your work (I will need to report this to Elise).

As you look at the OGC procedures, please think about what guidance and/or training we need to provide to ensure that OGC attorneys understand their role includes protecting disclosure of attorney client communication and attorney work product throughout the documents they are assigned to review, not just their own emails. Perhaps this needs to be highlighted in a coversheet as well as covered by a training in an all-hands meeting.

I have also attached the draft "awareness notification procedure." We need to create an SOP to ensure that we fully implement all of the steps in this document, when it becomes operative.

Thanks,
Tim

Timothy R. Epp
Acting Director, National FOIA Office
Office of General Counsel
U.S. Environmental Protection Agency
Tel. 202-564-2830

From: Epp, Timothy
Sent: Thursday, November 08, 2018 10:18 AM
To: OGC NFO <OGC-NFO@epa.gov>
Subject: Need a volunteer -- Workgroup on OGC's FOIA Procedures
Importance: High

Hi all,

Due to a FOIA release in August that included protected OGC attorney communication, we have been asked to work with GLO to review the OGC FOIA procedures to ensure that those procedures are adequate to ensure OGC's processing of FOIA requests prevents improper release of attorney communication in the future. This effort will also include development of operating procedures to ensure that we consistently implement the new awareness notification procedure when it goes into effect. GLO has assigned Peter Bermes to work on this from GLO's perspective. I need a volunteer from the NFO. (Larry will also be part of the work group.) Please let me know if you are interested in working on this.

Here is a link to the current OGC FOIA procedure: http://intranet.epa.gov/foia/docs/FOIA-SOPs--OGC.pdf

Thanks,

Tim

Timothy R. Epp
Acting Director, National FOIA Office
Office of General Counsel
U.S. Environmental Protection Agency
Tel. 202-564-2830

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 07 2018

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: FOIA Reporting Requirements and FOIAonline

TO: Vaughn Noga, Principle Deputy Assistant Administrator
Office of Environmental Information

FROM: Larry Gottesman, Agency Freedom of Information Act Officer

THRU: Denise Walker, Acting Director
National FOIA Office

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 statutory deadlines for responding to FOIA requests. In furtherance of this goal, the Agency created the National FOIA Office (NFO), in the Office of General Counsel (OGC). The NFO has responsibility for providing the data for national and regional measures that will track progress in reaching the goals of the Strategic Plan. These include: performance measures submitted the Office of Management and Budget; national bowling chart metrics; region/program-specific bowling chart line items; and mandatory quarterly and annual reports to the Department of Justice.

FOIAonline currently does not allow the NFO to produce reports on all the measures and metrics that OGC and the Office of Continuous Improvement have required monthly. Specifically, these are Percent Reduction of Overdue FOIA Requests; Percentage of FOIA requests completed within statutory deadlines; and Overdue FOIA Requests.

Therefore, I am requesting that you authorize the following changes to FOIAonline:

1. Ability of the NFO to search and report on actual number of days elapsed from receipt of a FOIA request until any tracked action is taken in FOIAonline (e.g., day to assign the FOIA, days to process a fee waiver or expedited process request, days to respond or decide an appeal, etc.);

2. Ability to display in a report whether "unusual circumstances" have been claimed and to be able to differentiate in a report those FOIA requests for which the deadline is extended to 30 working days (statutory deadline when unusual circumstances are documented).
3. Ability to track and indicate in a report if a change in due date that deviates from the statutory deadline has been negotiated.
4. Ability to associate in a report the individual assigned to respond to the FOIA request with the organization in which that individual resides. Since reporting is based on program we currently go through the time-consuming process of manually changing the staff person names to NPM codes.

These changes align with the report functionality requested in late January 2018, in a series of emails between Steve Fine, Tim Crawford and me. It was agreed to build the additional functionality into FOIAonline, on a priority basis, once FOIAonline 3.0 was deployed. If you would like to discuss these necessary changes or other ideas on how we can meet the Agency's reporting requirements for FOIA please contact me at gottesman.larry@epa.gov or (202) 566-2162.

cc: Kevin Minoli, Principle Deputy General Counsel
Office of General Counsel

Tim Crawford, Program Manager
FOIAonline

Message

From: Schumacher, Wendy [schumacher.wendy@epa.gov]
Sent: 6/5/2019 12:03:30 PM
To: Creech, Christopher [Creech.Christopher@epa.gov]
CC: Gottesman, Larry [Gottesman.Larry@epa.gov]
Subject: RE: Feedback Requested - EPA FOIA Reg Announcement
Attachments: DRAFT Messaging for FOIA Regulations WS edits 6 5 19.docx

Chris,

Thanks for the chance to comment. Looping in Larry to check my references to the Kaizen event.

Wendy

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From: Creech, Christopher
Sent: Tuesday, June 04, 2019 7:07 PM
To: Bermes, Peter <Bermes.Peter@epa.gov>; Bhatt, Krishna <bhatt.krishna@epa.gov>; Collazo, Beatriz <collazo.beatriz@epa.gov>; Creech, Christopher <Creech.Christopher@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>; Green, LindaE <Green.LindaE@epa.gov>; Hill, Kevin W. <hill.kevinw@epa.gov>; Lewis, Judith <Lewis.Judith@epa.gov>; Lewis, Monica <lewis.monica@epa.gov>; Moumbleaux, Joan <moumbleaux.joan@epa.gov>; Person, Linda <Person.Linda@epa.gov>; Rementer, Nicole <rementer.nicole@epa.gov>; Schumacher, Wendy <schumacher.wendy@epa.gov>; Spears, Rasheena <spears.rasheena@epa.gov>; Thompson, Heather <Thompson.Heather@epa.gov>; Vander Naald, Breanne <vandernaald.breanne@epa.gov>; Veney, Carla <Veney.Carla@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>
Subject: Feedback Requested - EPA FOIA Reg Announcement

Hello Team,

I am requesting a quick review and edits from the group on the attached draft message regarding the updates to the FOIA regulations. We hope to provide these tomorrow at the Reg Review, so please provide me with any feedback by 12 noon tomorrow. Thank you in advance for your help and thoughtfulness.

Best,

Christopher T. Creech
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