

**FEDERAL TRADE COMMISSION
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AND
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Section 1: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the DOJ's 2009 FOIA Guidelines is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

FOIA Training

1. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice?

Answer: Yes.

2. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

Answer: Training: One or more FOIA attorneys attended the following OIP/DOJ courses: *The Freedom of Information Act for Attorneys and Access Professionals* (July 2016); *FOIA Amendments Training* (August 2016); *Refresher Training for the Annual Report* (October 2016). Conferences: The Chief FOIA Officer attended two *Chief FOIA Officer Council Meetings* (July 2016; September 2016); two FOIA attorneys attended the *2016 National Freedom of Information Day Conference at the Newseum* (March 2016).

3. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

Answer: 30%

4. OIP has directed agencies to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year." If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

Answer: The agency will have: (1) one FOIA attorney attend the OIP/DOJ *Advanced Freedom of Information Act Seminar* (January 2017); (2) two FOIA attorneys attend the OIP/DOJ *FOIA Litigation Seminar* (June 2017); (3) at least one FOIA attorney and two government information specialists attend the OIP/DOJ *Continuing FOIA Education Seminar* (April 2017). With these trainings, over 80% of the FTC's FOIA professionals will have attended substantive FOIA training during the Chief FOIA Officer Report reporting period.

Outreach

5. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA?

Answer: Each FOIA staff member handling requests provides his or her direct telephone number to the requester in the acknowledgment, extension, and response letters. Additionally, individuals can contact the FTC's FOIA Hotline, at (202) 326-2430, with questions. The FTC also provides the contact information for its FOIA Public Liaison on its website, available at <https://www.ftc.gov/about-ftc/foia/freedom-information-act-contacts>. Through these avenues, the FOIA Office routinely communicates with requesters and other members of the public on an individual basis, and is available to answer questions regarding FOIA policies or procedures.

6. If you did not conduct any outreach during the reporting period, please describe why.

Answer: N/A

Other Initiatives

7. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.

Answer: The Assistant General Counsel for Information Law conducted a customized seminar and round-table discussion for the attorneys within the Bureau of Consumer Protection to explain FOIA exemptions as applied to agency documents. The Assistant General Counsel also conducted several smaller FOIA round-table discussions for specific Divisions within the Bureaus upon request. Throughout the year, the Assistant General Counsel meets with agency staff as needed to discuss FOIA-related issues. The agency's FOIA officers are also available to answer any questions that arise.

8. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

Answer: On September 15, 2016, the FTC posted its Open Government Plan pursuant to the July 14, 2016, memorandum (2016 Open Plan Guidance) from Tony Scott, U.S. Chief Information Officer. The FTC's Plan furthers the actions it took relating to the issuance of the Office of Management and Budget's 2009 Open Government Directive to incorporate the principles of transparency, participation, and collaboration set forth in former President Obama's January 21, 2009 Memorandum on Transparency and Open Government. The FTC's Open Government page is located here https://www.ftc.gov/system/files/attachments/open-government/final_opengov_plan2016.pdf.

Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

The DOJ's 2009 FOIA Guidelines emphasized that “[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests.” It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that the management of your FOIA program is effective and efficient. You should also include any additional information that that describes your agency’s efforts in this area.

Processing Procedures

1. For Fiscal Year 2016, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency’s Fiscal Year 2016 Annual FOIA Report.

Answer: 4 days.

2. If your agency’s average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Answer: N/A

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

Answer: Yes. A review of the FY2015 Annual Report raw data provided an opportunity to issue revised data-recording procedures within our tracking system with respect to consultations and referrals, fee waivers and closing requests based on “other reasons”. These procedures were issued through “Best Practices” communications to all full-time FOIA staff.

4. Please provide an estimate of how many requests your agency processed in Fiscal Year 2016 that were from commercial use requesters. If your agency is decentralized, please identify any components within your agency that received a majority of their requests from commercial use requesters.

Answer: Approximately 138 requests.

Requester Services

5. Does your agency provide a mechanism for requesters to provide feedback about their experience with the FOIA process at your agency? If so, please describe the methods used, such as making the FOIA Public Liaison available to receive feedback, using surveys posted on the agency’s website, etc.

Answer: Yes. If a requester has questions or comments about the FOIA process, they may call the FOIA Requester Service Center at (202) 326-2430 either to speak directly to a FOIA representative or leave a voice message. A requester may ask the FOIA representative to speak with the FOIA Public Liaison if there are concerns about the quality of the service received regarding the processing of an initial response or appeal. Moreover, the FOIA Public Liaison's contact information is available here <https://www.ftc.gov/about-ftc/foia/freedom-information-act-contacts> and any individual can directly contact the FTC's FOIA Public Liaison. FOIA Case Officers and the Public Liaison are available to assist individual requesters at each step of the process in filing a FOIA request.

6. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of how often requesters sought assistance from your agency's FOIA Public Liaison.

Answer: Approximately 25 times.

7. The FOIA Improvement Act of 2016 requires agencies to make their reference material or guide for requesting records or information from the agency electronically available to the public. Please provide a link to your agency's FOIA reference guide.

Answer: The FTC's FOIA reference guide is available here <https://www.ftc.gov/about-ftc/foia/foia-request>. We also post the FTC's Freedom of Information Act and Privacy Act Handbook (February 2017) here https://www.ftc.gov/system/files/attachments/foia-request/foiahandbook_2017.pdf.

Other Initiatives

8. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundancy, etc., please describe them here.

Answer: The FOIA Office holds biweekly meetings in which staff members evaluate processing procedures, identify areas that can be improved, and offer recommendations for improvement. In addition, FOIA staff frequently consults with FOIA Access Officers throughout the FTC to determine how to make the agency's search process more efficient. FOIA staff also searches the agency's electronic FOIA database for related requests. If a similar request has been filed in the past, staff asks the requester if they would like to access these records to decrease processing time.

Section III: Steps Taken to Increase Proactive Disclosures

Both the President's and DOJ's FOIA memoranda focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

Posting Material

1. Describe your agency's process or system for identifying "frequently requested" records that should be posted online.

Answer: FOIA staff are trained to identify instances where three or more requests have sought the same set of documents. When this occurs, FOIA staff instruct the agency's Web Team to post the accessible documents in the agency's FOIA reading room. Additionally, during the FOIA Office bi-weekly meetings, we discuss all requests which helps us identify frequently requested subjects. These requests can be found here <https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/frequently-requested-records>.

2. Does your agency have a distinct process or system in place to identify other records for proactive disclosure? If so, please describe your agency's process or system.

Answer: In 16 C.F.R. § 4.9, the FTC specifically identifies all of the material that it considers to be part of the public record as well as how to request and access those records. See also the FTC's Web Publication Schedule available at <https://www.ftc.gov/site-information/website-policy/web-publication-schedule>. Rather than wait for a member of the public to make a public records request, the agency proactively posts the vast majority of the materials listed in this section on our web site. These records include, but are not limited to: Commission Organization and Procedures, the FTC's opinions, orders, statements of policy and interpretations, administrative staff manuals, records of final Commission votes, industry guidance, rulemakings, closing letters, administrative law judge decisions, consent agreements, etc. All of these records pass through the Office of the Secretary. Once received, the Office of the Secretary confirms the public status of the records with the Commission. Once confirmed, the Office of the Secretary notifies the Office of the Public Affairs (OPA) of its intent to post the records. Concurrently, OPA staff meets daily to review upcoming record disclosures. Staff evaluates the importance and newsworthiness of each proposed disclosure based on a number of factors. In many cases, the OPA issues press releases announcing Commission activities and directs consumers to web pages containing additional information. The agency also maintains Twitter, Facebook and YouTube accounts. The FTC's official Twitter account is available in both English and Spanish. In addition, the Acting Chairman and Commissioner each have their own Twitter accounts, which they use to disseminate a wide array of information regarding Commission activities. Finally, various divisions throughout the Commission maintain blogs relating to specific topics of interest to consumers or businesses. For more information on the FTC's use of social media, please see <https://www.ftc.gov/news-events/social-media>.

3. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?

Answer: No.

4. If so, briefly explain those challenges and how your agency is working to overcome them.

Answer: N/A

5. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.

Answer: As explained above, documents posted on the agency’s website include court documents and adjudicative decisions (<https://www.ftc.gov/enforcement/cases-proceedings>), public comments (<https://www.ftc.gov/policy/public-comments>), workshop and event information (<https://www.ftc.gov/news-events/events-calendar>), speeches (<https://www.ftc.gov/news-events/speeches>), and a wide range of other documents.

Additionally, as described above, the FOIA Office maintains a webpage frequently requested records, available at <https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/frequently-requested-records>. Examples of records that have been posted during the fiscal year include documents relating to Herbalife, LifeLock and documents related to the former presidential candidates of the 2016 United States presidential race. Also available online are “hot topics” such as the Do-Not-Call and Consumer Sentinel complaint databases (<https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/hot-topics>).

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe these efforts.

Answer: As stated previously, the FTC increases proactive disclosure by disseminating new information daily, through a variety of mechanisms. The FTC’s Office of Public Affairs routinely issues press releases announcing Commission activities and directing consumers to web pages containing additional information. The agency also maintains Twitter, Facebook and YouTube accounts. The FTC’s official Twitter account is available in both English and Spanish. In addition, the Acting Chairman and Commissioner each have their own Twitter accounts, which they use to disseminate a wide array of information regarding Commission activities. Finally, various divisions throughout the Commission maintain blogs relating to specific topics of interest to consumers or businesses. For more information on the FTC’s use of social media, please see <https://www.ftc.gov/news-events/social-media>.

Other Initiatives

7. If there are any other steps your agency has taken to improve proactive disclosures, please describe them here. For example, has your agency engaged requesters in determining how and what to post? Has your agency used web analytics to inform your proactive disclosures?

Answer: The agency’s Web Team recently conducted a “user-experience” lab to assess strengths, weaknesses, and potential improvements of and for the agency’s website. During the lab, agency personnel were asked to perform certain tasks on webpages and were surveyed by the Web Team. The labs are on-going and the FOIA Office intends to use web analytics to capture aggregated information about the FOIA Library.

Section IV: Steps Taken to Greater Utilize Technology

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

Making Material Posted Online More Useful

1. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website?

Answer: Yes.

2. If yes, please provide examples of such improvements.

Answer: During this reporting period, the FOIA Office updated its FOIA Frequently Requested Records webpage to make it more user-friendly. For example, the webpage now includes a Topic table that lists frequently requested subject-matter, including company names and general topics. Each Topic includes a hyperlink to released documents posted on the FOIA Frequently Requested Records webpage available here <https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/frequently-requested-records>.

3. Have your agency's FOIA professionals interacted with other agency staff (such as technology specialists or public affairs or communications professionals) in order to identify if there are any new ways to post agency information online?

Answer: Yes. As noted previously, the agency's Web Team recently conducted a "user-experience" lab to assess strengths, weaknesses and potential improvements of and for the agency's website. During the lab, agency personnel were asked to perform certain tasks on webpages and were surveyed by the Web Team. Multiple FOIA staff participated in the lab.

Use of Technology to Facilitate Processing of Requests

4. Did your agency conduct training for FOIA staff on any new processing tools during the reporting period, such as for a new case management system, or for search, redaction, or other processing tools?

Answer: No, the agency did not acquire any new processing tools during this reporting period.

5. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents? If yes please describe:

- The technological improvements being made.
- The impact of using these technologies on your agency's request processing.

Answer: N/A

6. Are there additional tools that could be utilized by your agency to create further efficiencies?

Answer: N/A

Other Initiatives

7. Did your agency successfully post all four quarterly reports for Fiscal Year 2016?

Answer: Yes.

8. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2017.

Answer: N/A

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs

The President's FOIA Memorandum and the DOJ's 2009 FOIA Guidelines have emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2016 Annual FOIA Report and, when applicable, your agency's 2015 Annual FOIA Report.

Simple Track

Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

1. Does your agency utilize a separate track for simple requests?

Answer: Yes.

2. If so, for your agency overall in Fiscal Year 2016, was the average number of days to process simple requests twenty working days or fewer?

Answer: Yes. The FTC's average number of days to process simple requests was 6 days.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2016 that were placed in your simple track.

Answer: Approximately 59%.

4. If your agency does not track simple requests separately, was the average number of days to process all non-expedited requests twenty working days or fewer?

Answer: N/A

Backlogs

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2015 and Fiscal Year 2016 when completing this section of your Chief FOIA Officer Report.

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and

describe the causes that contributed to your agency not being able reduce its backlog.

Answer: No.

6. If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming requests.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

Answer: The agency received an increase in the complexity of requests received. Many of these requests were related to publicly-announced settlements of high-profile cases, such as the VW Defeat Device settlement, the Herbalife settlement and the LifeLock settlement. With information so readily available, the media and requesters have instant notice when a high-profile case is settled and we find requesters are often interested in the documents related to the underlying investigation immediately following publication of a settlement. Frequently, these files are voluminous. Additionally, we had a number of full-time FOIA staff members out on long-term leave throughout this reporting period.

7. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests *received* by your agency in Fiscal Year 2016.

Answer: Less than 1%.

BACKLOGGED APPEALS

8. If your agency had a backlog of appeals at the close of Fiscal Year 2016, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2015? If not, explain why and describe the causes that contributed to your agency not being able reduce backlog.

Answer: N/A

9. If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

Answer: N/A

10. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2016. If your agency did not receive any appeals in Fiscal Year 2016 and/or has no appeal backlog, please answer with “N/A.”

Answer: N/A

Backlog Reduction Plans

11. In the 2016 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2015 was asked to provide a plan for achieving backlog reduction in the year ahead. Did you agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2016?

Answer: N/A

12. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2016, what is your agency's plan to reduce this backlog during Fiscal Year 2017?

Answer: N/A

Status of Ten Oldest Requests, Appeals, and Consultations

Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2015 and Fiscal Year 2016 when completing this section of your Chief FOIA Officer Report.

TEN OLDEST REQUESTS

13. In Fiscal Year 2016, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

Answer: No.

14. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2015 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Answer: The FTC closed nine of the ten oldest requests from FY2015.

15. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

Answer: None.

TEN OLDEST APPEALS

16. In Fiscal Year 2016, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

Answer: N/A

17. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2015 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Answer: N/A

TEN OLDEST CONSULTATIONS

18. In Fiscal Year 2016, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2015 Annual FOIA Report?

Answer: N/A

19. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2015 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Answer: N/A

Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans

20. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2015.

Answer: There are no specific obstacles that can be identified with respect to closing the one oldest request.

21. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

Answer: N/A

22. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2017.

Answer: The agency only had one backlogged request that was not closed in FY2016 and generally does not have on-going issues with backlogged requests.

Interim Responses

23. Does your agency have a system in place to provide interim responses to requesters when appropriate? See *OIP Guidance*, “The Importance of Good Communication with FOIA Requesters.” (Mar. 1, 2010)

Answer: The FTC frequently issues rolling responses to requesters.

24. If your agency had a backlog in Fiscal Year 2016, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

Answer: Substantive, interim responses were provided in eight of 12 Fiscal Year 2016 backlogged requests.

Success Stories

Out of all the activities undertaken by your agency since March 2016 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas. As noted above, these agency success stories will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

Answer: Through increased training and more effective utilization of the FOIA Public Liaison Officer, only one FOIA appeal of the 27 appeals filed in FY2016 was completely reversed. Additionally, within one month of the FOIA Improvement Act of 2016 being enacted, the agency modified its letters to requesters informing them of the 90-day appeal period, the option to seek assistance from our FOIA Public Liaison Officer, and the ability to seek assistance from OGIS if they were not satisfied with our response to their request. The agency also quickly updated its FOIA webpages to inform the public of the FOIA Improvement Act of 2016 changes. Finally, the agency updated its regulations with a unanimous vote from the Commission so that the amended regulations comport with the FOIA Improvement Act of 2016.