

U.S. House of Representatives
Committee on Oversight and Government Reform
Darrell Issa (CA-49), Chairman



**Report Card on Federal Government's Efforts to
Track and Manage FOIA Requests**

Staff Report
U.S. House of Representatives
112th Congress
Committee on Oversight and Government Reform
March 15, 2012

Report Card on Federal Government's Efforts to Track and Manage FOIA Requests

Overview

The American people have a fundamental right to know how government works and what is being done with taxpayer dollars. The Freedom of Information Act (FOIA) is the primary resource the American public has available to them to fulfill that right. FOIA is a foundational transparency law, and when used and interpreted correctly, has proven itself to be extremely effective in making the federal government more transparent and accountable. Under FOIA, people may file a request for any existing record at any federal agency for any reason.¹ Agencies subject to the FOIA include the Executive Branch departments, agencies, and offices; federal regulatory agencies; and federal corporations.

FOIA was signed into law by President Lyndon B. Johnson in 1966. Prior to FOIA's enactment, the general public had no formal method to request or receive information from the government. Some federal government meetings were held in secret and citizens had access only to information that the government chose to make public. When FOIA was enacted it was revolutionary. It was the third freedom of information law in the world and by far the most far reaching. However, constant oversight of FOIA is necessary for it to be implemented properly and remain effective.

As part of a broader effort to conduct oversight over FOIA to help improve government transparency, on January 25, 2011, Oversight and Government Reform Committee Chairman Darrell Issa sent a letter to 180 entities representing 100 government agencies requesting information about their FOIA tracking systems. The letter requested each entity to provide an electronic and sortable copy of its FOIA logs containing the following information: 1) the name of the requester; 2) the date of the request; 3) a brief description of the documents or records sought by the request; 4) any tracking number assigned to the request by the agency as required by Section 7 of the OPEN Government Act of 2007; 5) the date the request was closed, if not still an outstanding request; 6) whether records were provided in response to the request; 7) any additional identification number or codes assigned to the request by the agency for internal use.

The ability and willingness of agencies to submit this information (or lack thereof) served as the basis of an objective evaluation by committee staff of agency FOIA management. While high grades do not necessarily mean that agencies are providing thorough, timely, and appropriate responses to individual FOIA requestors, they do indicate a willingness and ability by an agency FOIA office to show accountability and transparency in the management of requests. Lower scores, on the other hand, generally indicate agencies that are unwilling or struggling to demonstrate transparency about their own efforts to manage and respond to FOIA requests. One can imagine the difficulty journalists or ordinary citizens face in submitting requests to FOIA offices that cannot or will not even provide basic information to a Congressional Committee that exercises jurisdiction over FOIA about its efforts to manage and track requests.

¹ The Freedom of Information Act, 5 U.S.C. § 552, As Amended By Public Law No. 110-175, 121 Stat. 2524, and Public Law No. 111-83, § 564, 123 Stat. 2142, 2184, <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>.

Findings

Federal Government Earns a C-

The Committee assigned its grade of governmentwide FOIA logs based on the average of the 17 Cabinet-level departments, which have the most components and receive the majority of requests. This grade was a C-, which is slightly below average, and it most accurately reflects the performance of the Federal government in this evaluation as related to the overwhelming majority of FOIA requests.

When the very small agencies are added to the 17 Cabinet-level departments the overall grade increased to a B-, which is above average. As this rating treats all agencies equally, it does not account for the reality that smaller agencies tended to perform better than larger agencies which receive the vast majority of requests. Additionally, Departments with multiple components were evaluated on an agency-wide level and not on each individual component.

Many Logs are Not Sufficient

Sixty-two of 100 agencies contained all necessary information in their FOIA logs. The rest of the logs were missing information to varying degrees of severity. Some logs simply did not list whether requesters were individuals or organizations, while others did not contain information on status, disposition, subject matter, or tracking numbers. Of the 62 agencies that produced sufficient logs, many also provided additional information such as the number of pages released in response to requests, any exemptions cited, and request referrals.

Logs Are Missing Information

Many FOIA logs are vague or missing information. As a result, it is often impossible to tell what the subject of the request was, who requested it, or whether records were ever released. The Board of Broadcasting Governors, for example, listed 182 total FOIA requests in its production to the Committee. Of the 182 requests, 135 listed that it was “unknown” whether records were produced, while only 32 requests listed that records had been produced to the requester.

While most agencies included descriptions of records requested, they often lacked uniformity. The Department of Agriculture’s Natural Resources Conservation Service describes records sought simply as “documents,” while the U.S. Customs and Border Protection described subjects only as “request for records,” and “requesting information.”

Agencies Did Not List Types of Requesters

Numerous agencies failed to differentiate between people filing FOIA requests on their own behalf and people filing requests for organizations. Although individuals, representatives of the media, and corporations are all separate categories of requesters, this distinction was rarely noted. In most instances, logs did not note the type of requester, and in many cases the agencies only logged the name of the requester and did not mention the organization at all.

Tracking Numbers Are Missing

Under FOIA, agencies are required to assign tracking numbers to any request that cannot be resolved in less than ten business days. However, a number of agencies did not list tracking numbers in their logs. The Department of Agriculture had three components that did not list any tracking numbers, and the Department of Defense also had numerous components that did not list tracking numbers for all or part of their logs.

Agencies Could Not Produce Electronic Logs

The Committee requested that all logs be produced in electronic format, but not all agencies were willing or able to comply with this request. Agencies that cannot or will not produce large quantities of information in a format that allows for analysis are simply not being transparent. Seven agencies produced only PDF or paper copies of their logs, including the Department of Housing and Urban Development (HUD) and the Department of the Interior. HUD could not even produce PDFs of its logs because its FOIA system is over 25 years old.

Logs Do Not List Status or Disposition

Many logs did not satisfactorily list the status or final disposition of FOIA requests. The Department of State does not list disposition at all for any of its requests. Other agencies, including the Department of Justice, often define the disposition as “other,” but never clarify what “other” means. Seven departments had all or some components that did not provide disposition of request. Some agencies, including Department of Agriculture and the Department of Health and Human Services, have two or three options listed for final disposition, but the options are either unchecked or have all options listed as yes (or, in some cases, all options listed as no). The Office of Navajo and Hopi Indian Relocation has an option for full, partial denial, or full denial of requests, but every request lists no for all three options.

Logs at DOJ Are Inadequate

The Department of Justice, which is responsible for setting FOIA compliance throughout government, produced logs for only three of its components (40 components received the request). One set of logs produced by DOJ is through its main FOIA office, the Office of Information Policy (OIP). In five years, OIP received 1843 FOIA requests. Of those 1843 requests, only 253 received either full or partial grants of records. There were 517 requests still pending, and 61 requests denied in full. The remaining requests were closed for numerous legal reasons, usually listed as “other” in the logs. Another log from the Foreign Claims Settlement Commission was completely missing crucial information (including requester names and request subject) for 36 of the total 53 requests it received.

Evaluation

Of the 180 requests issued by the Committee, 125 entities provided FOIA logs in an electronically accessible format. Eight entities could only provide hard copies or PDFs of their FOIA logs, while 47 entities did not produce logs. The majority of entities that did not produce logs were located within the Department of Justice, where only 3 out of 40 entities submitted their logs to the Committee.

Committee staff evaluated the electronic FOIA logs and graded them based on their content and usefulness. All logs were graded based on five necessary components: 1) the name of the requester; 2) a description of the subject of the request; 3) the legally required tracking number for the request; 4) the status of the request (whether it was an open request or had been closed); and 5) whether records were granted to the requester (disposition of the request).

A Grade: Logs that contained all necessary components received an A. Logs that contained additional information beyond what was required received an A+ while logs that contained all necessary information but were missing certain secondary data (such as the organization of the requester when the FOIA request was made on behalf of a group) received an A-.

B Grade: Logs that were missing only one necessary component received a B.

C Grade: Logs that were missing two necessary components received a C.

D Grade: Logs that were missing three or more necessary components received a D.

F Grade: Agencies that did not respond with any records or failed to produce them in digital format received an F.

For agencies with multiple components, the Committee recorded the components that contained all necessary information, but gave the agency a grade based on all of their logs.

Cabinet-Level Agencies		
Department of Justice	<ul style="list-style-type: none"> -Only provided logs for 3 of its 40 components - Foreign Claims has categories for all necessary information, but the fields are blank for over two thirds of the requests. - Civil Rights and Office of Information and Policy include all necessary information, but often list “other” as final disposition without clarifying what other means. 	Grade: D
Department of Agriculture	<ul style="list-style-type: none"> -Missing key information including subject matter, tracking number, status, and disposition. -No standard between component logs. -Numerous requests (and 3 entire components) do not list tracking numbers even though they were open for more than 10 days. - 3 components have no tracking numbers: DM, FNS, OBPA. - 4 components list no status: DM, FNS, FSA, GIPSA -REE lists status as either blank or “yes,” but does not specify what yes means. - NRCS has no tracking number, no dates, and subject matter for the majority of requests is described as “documents.” 	Grade: D
Department of Commerce	Did not produce any logs.	Grade: F
Department of Defense	<ul style="list-style-type: none"> - DoD produced logs for 32 of 34 requested entities. - 16 entities had logs with all necessary information: Air Force 2007-2011, Marines, DIA, DISA, JFCOM, Navy, NGB, NORTHCOM, NRO, NSA, SOUTHCOM, STRATCOM, TMA, USAFRICOM, USCENTCOM, USTRANSCOM . - 15 other components were missing key information including subject matter, tracking numbers, status, and disposition - There was no standard between component logs. - 7 components did not adequately describe subject, descriptions are often only “Budget,” “IG,” or “unknown” (Army Corps of Engineers, Installation Management, National Guard, DeCA, DSS, FUCOM). - 6 components did not adequately log the status of the request. Some components (SOCOM, NGA), did not include any status, others left out disposition in some instances or were unspecific (Army FACTS, DCAA, DeCA, PACOM). 	Grade: D
Department of Education	Log contains all necessary information.	Grade: A
Department of Energy	Logs have all necessary information. Most components use a consistent format for logs.	Grade: A
Department of Health and Human Services	<ul style="list-style-type: none"> -CMS uses abbreviations, with almost no information on subject. Does not list if requester received records. -CMS provided logs for 183 contractors, but 97 were in PDF format. 	Grade: D

	<ul style="list-style-type: none"> - PSC has 3 options (full, partial, or full denial) for final dispositions. Most requests list “no” for all 3 options. - FDA, NIH, and OS have logs containing all necessary information. 	
Department of Homeland Security	<ul style="list-style-type: none"> -No consistency of FOIA log format between components or even in components from year to year. - Only provided logs in electronic format for pending requests. All closed requests were only provided in PDFs. -CBP only lists status and disposition in logs from 2010 and 2011. Status is often very vague, with descriptions listing only “request for records,” or “requesting information.” - 4 components do not list status or disposition: CBP, CRCL, NPPD, USSS. 	Grade: D
Department of Housing and Urban Development	Could not provide PDFs or electronic copies for reports. Only hard copies were provided.	Grade: F
Department of the Interior	Only provided PDF logs.	Grade: F
Department of Labor	Logs have all necessary information. Logs from FY 2009 were not provided.	Grade: A
Department of State	<ul style="list-style-type: none"> - Logs do not list final disposition. - Descriptions are too vague to determine subject. - Many fields are blank. 	Grade: C
Department of Transportation	Logs have all necessary information.	Grade: A
Department of Treasury	Logs have all necessary information, but do not list organizations for non-private citizen requesters.	Grade: A-
Department of Veterans Affairs	<ul style="list-style-type: none"> - No consistency between components or logs. -2 components do not provide tracking numbers for all requests: OAEM, ORM. - 4 components only provided PDFs: OGC, OSP, Office of the Secretary, and National Cemetery Administration (NCA’s logs were filled out by hand). - Budget lists disposition as “negative” or “positive,” but it is unclear what that means. -3 components had logs with all necessary information: Board of Veterans Appeals, CFM, Office of Acquisition. 	Grade: D
Environmental Protection Agency	Logs have all necessary information, but do not list organizations.	Grade: A-
Exec. Off. – Office of Management and Budget	Only provided PDF logs.	Grade: F

Non-Cabinet Agencies		
Agency for International Development – USAID	Logs have all necessary information.	Grade: A
American Battle Monuments Commission	Logs have all necessary information.	Grade: A
Amtrak	Logs have all necessary information. Additional information provided: organization, fees, fee waivers, exemptions.	Grade: A+
Broadcasting Board of Governors	Logs do not list whether records were granted. Does not list organization.	Grade: B
Central Intelligence Agency	Logs are missing name of requester and whether records were granted.	Grade: C
Chemical Safety and Hazard Investigation Board	Logs have all necessary information.	Grade: A
Commission on Civil Rights	Only began assigning tracking numbers in 2010 (the law required tracking numbers beginning in January 2009), logs do not list organizations.	Grade: B
Committee for Purchase from People who are Blind or Severely Disabled	Logs have all necessary information.	Grade: A
Commodity Futures Trading Commission	Logs have all necessary information.	Grade: A
Consumer Product Safety Commission	Logs have all necessary information, but do not list organizations.	Grade: A-
Corporation for National and Community Service	Logs do not contain subject matter, but do provide additional information on search times and number of pages released.	Grade: B
Court Services and Offender Supervision Agency	Logs have all necessary information.	Grade: A
Defense Nuclear Facilities Safety Board	Logs have all necessary information, but do not list organizations.	Grade: A-
Exec. Off. – Equal Employment Opportunity Commission	Logs have all necessary information, but only pending requests were provided.	Grade: A-
Exec. Off. – Council on Environmental Quality	Logs have all necessary information, but some requests are missing subject. Subjects that are provided are vague.	Grade: B
Exec. Office of National Drug Control Policy	Logs have all necessary information.	Grade: A
Exec. Office of Science and Technology Policy	Logs have all necessary information. Additionally include number of pages released to requester.	Grade: A+
Exec. Office of the US Trade Representative	Logs have all necessary information. Additionally include names of officers processing the request, full description of request.	Grade: A+
Export-Import Bank	Did not provide any logs.	Grade: F
Farm Credit Administration	Logs have all necessary information.	Grade: A

Farm Credit System Insurance Corporation	Logs have all necessary information.	Grade: A
Federal Communications Commission	Logs have all necessary information.	Grade: A
Federal Deposit Insurance Corporation	Only provided logs in PDF format.	Grade: F
Federal Election Commission	Logs have all necessary information.	Grade: A
Federal Energy Regulatory Commission	Logs have all necessary information, additionally include information on request referrals.	Grade: A+
Financial Institutions Examination Council	Does not maintain FOIA logs due to low number of requests. Submitted annual FOIA reports.	Grade: N/A
Federal Housing Finance Agency	Logs have all necessary information, additionally include organizations and referrals.	Grade: A+
Federal Labor Relations Authority	Logs have all necessary information, additionally include number of days to process request, time spent processing request, and fees assessed.	Grade: A+
Federal Maritime Commission	Logs have all necessary information, additionally include exemptions cited.	Grade: A+
Federal Mediation and Conciliation Service	Logs have all necessary information.	Grade: A
Federal Mine Safety and Health Review Commission	Logs have all necessary information, additionally include exemptions cited.	Grade: A+
Federal Open Market Committee	Logs have all necessary information, but do not list organizations.	Grade: A-
Federal Reserve System	Logs have all necessary information, but do not list organizations.	Grade: A-
Federal Retirement Thrift Investment Board	Only provided logs in PDF format.	Grade: F
Federal Trade Commission	Logs have all necessary information, including organizations. Logs also include number of days to process requests.	Grade: A+
General Services Administration	Logs have all necessary information.	Grade: A
Institute of Museum and Library Services	Logs have all necessary information.	Grade: A
Inter-American Foundation	Logs only have last names and do not list organization. Logs have no tracking numbers.	Grade: B
Legal Services Corporation	Did not respond to request.	Grade: F
Merit Systems Protection Board	Logs have all necessary information, but descriptions are often blank or vague, such as “request for documents.”	Grade: A-
Millennium Challenge Corporation	Logs have all necessary information, but do not list organizations. Lists exemptions cited.	Grade: A-
National Aeronautics and Space Administration –	Logs have all necessary information, but do not list organizations. Has exemptions cited for FOIA	Grade: A-

NASA	requests that are denied, but not for partial grants.	
National Archives and Records Administration	Logs have all necessary information.	Grade: A
National Capital Planning Commission	Logs have all necessary information.	Grade: A
National Credit Union Administration	Logs do not list organizations. Also cite “other reasons,” but have no explanation of what the reasons are.	Grade: B
National Endowment for the Arts	Logs do not list organization, and subject is often vague, such as “funding,” or “unknown.”	Grade: B
National Endowment for the Humanities	Logs have all necessary information. Additionally include organizations, exemptions, whether requests are simple or complex, and how many days to process.	Grade: A+
National Indian Gaming Commission	Logs have all necessary information, but do not list organizations.	Grade: A-
National Labor Relations Board	Logs have all necessary information, but do not include organizations. Does list referrals to or from other agencies.	Grade: A-
National Mediation Board	Logs have all necessary information.	Grade: A
National Science Foundation	Did not respond to request.	Grade: F
National Transportation Safety Board	Logs have all necessary information, but disposition is vague, lists “other reasons” without defining.	Grade: B
Nuclear Regulatory Commission	Logs have all necessary information, but do not list organizations. Additionally lists whether records were granted and any exemptions claimed.	Grade: A-
Occupational Safety and Health Review Commission	Logs have all necessary information, additionally include number of pages produced and fees charged to requesters.	Grade: A+
Office of the Director of National Intelligence	Did not provide electronic copies of records.	Grade: F
Office of Government Ethics	Logs have all necessary information, and also contain exemptions cited.	Grade: A+
Office of Navajo and Hopi Indian Relocation	Logs are missing organizations for requesters, have vague subject descriptions. Logs have an option for full grants or partial denial, but <i>all</i> logs list “no” for both. Descriptions are vague, such as “entire file,” or “deed.”	Grade: C
Office of Personnel Management	Logs contain all necessary information.	Grade: A
Office of Special Counsel	Logs have all necessary information, but subject matter is vague, often lists “all file records” as description.	Grade: B
Overseas Private Investment Corporation	Logs have all necessary information, but no logs were produced for 2009 and 2010. No organizations are listed, and descriptions are vague.	Grade: B
Peace Corps	Logs have all necessary information.	Grade: A

Pension Benefit Guaranty Corporation	Did not produce electronic logs.	Grade: F
Postal Regulatory Commission	Logs have all necessary information.	Grade: A
Railroad Retirement Board	Does not maintain logs due to low number of requests.	N/A
Securities and Exchange Commission	Logs have all necessary information, and lists the type of requesters.	Grade: A+
Selective Service System	Logs do not have record descriptions, and do not list organizations or whether records were provided.	Grade: C
Small Business Administration	Logs have all necessary information, but do not list organization of requesters.	Grade: A-
Social Security Administration	Logs do not list whether records were produced, and descriptions are all abbreviations without enough information to determine subject of the request.	Grade: C
Special Inspector General for Iraq Reconstruction	Logs contain all necessary information, additionally lists fees charged to requesters.	Grade: A+
Surface Transportation Board	Logs have all necessary information, additionally list number of days to process requests.	Grade: A+
Tennessee Valley Authority	Logs have all necessary information.	Grade: A
US African Development Foundation	Logs have all necessary information.	Grade: A
US Copyright Office	Logs contain all necessary information.	Grade: A
US International Boundary and Water Commission	Only provided PDFs of logs.	Grade: F
US International Trade Commission	Logs have all necessary information, but do not list organizations of requesters.	Grade: A-
US Postal Service	Logs have all necessary information.	Grade: A
US Trade and Development Agency	Logs have all necessary information.	Grade: A
Advisory Council on Historic Preservation	Did not produce FOIA logs.	Grade: F
Election Assistance Commission	Logs have all necessary information, but do not list organizations of requesters. Does list number of pages provided.	Grade: A-
Smithsonian Institution	Logs have all necessary information.	Grade: A
State Justice Institute	Did not respond to request.	Grade: F
US Institute of Peace	Has not received any FOIAs, therefore has no logs.	Grade: N/A
Food Safety and Inspection Service	Logs have all necessary information. Instead of describing records, agency copies and paste request. Sometimes this is informative, usually just cut off and fragmented information.	Grade: A

Summary

There are many long standing problems with FOIA compliance, and it is obvious that increased oversight of agencies is needed. The Committee's FOIA Scorecard evaluated agency ability to track basic information about the FOIA requests they process. The majority of agencies recorded the required information for their FOIA logs and were able to produce the data easily, while many agencies were unable to produce their logs in an electronic and searchable format.

It is problematic that many agencies do not appear to be tracking necessary data, especially FOIA tracking numbers. Tracking numbers are legally required to be assigned to any requests that are open more than ten days, and are the primary way requesters can check on the status of their requests with the agencies. The three agencies that receive the most FOIA requests (the Department of Homeland Security, the Department of Defense, and the Department of Justice, respectively) were all missing critical information in their FOIA tracking logs.

This review of agency FOIA logs provides important information about the quality of agency FOIA tracking. Additional oversight attempting to assess the efficient and timely management of FOIA requests is required, and agencies must improve FOIA tracking in order for FOIA effectiveness to be measured and improved. When agencies cannot even produce FOIA logs with basic information to Congress, it raises serious concerns about their ability to meet their legal obligations to FOIA requesters. The public deserve to know the activities of its government. This belief has shaped our country since its beginning, and as James Madison wrote: "A popular government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both... a people who mean to be their own Governors must arm themselves with the power which knowledge gives."² The Committee firmly believes that that people have a right to a transparent, accountable government. FOIA is the embodiment of that right, and the Committee will conduct continued, vigorous oversight to ensure that the right to an open government is upheld and fully enforced.

Agency Abbreviations

Department of Agriculture

DM – Department of Management

FNS – Food and Nutrition Service

OBPA – Office of Budget and Program Analysis

FSA – Farm Service Agency

GIPSA – Grain Inspection, Packers and Stockyards Administration

REE – Research, Education and Economics

NRCS – National Resources Conservation Service

Department of Defense

DIA – Defense Intelligence Agency

DISA – Defense Information Systems Agency

JFCOM – Joint Forces Command

NGB – National Guard Bureau

NORTHCOM – United States Northern Command

² James Madison, August 4, 1822.

NRO – National Reconnaissance Office
NSA – National Security Agency
SOUTHCOM – United States Southern Command
STRATCOM – U.S. Strategic Command
TMA – TRICARE Management Activity
USAFRICOM - U. S. Africa Command
USCENTCOM – U.S. Central Command
USTRANSCOM – U.S. Transportation Command
DeCA – Defense Commissary Agency
DSS – Defense Security Service
EUCOM – European Command
SOCOM – Special Operations Command
NGA – National Geospatial-Intelligence Agency
DCAA – Defense Contract Audit Agency
PACOM – Pacific Command

Department of Health and Human Services

CMS – Centers for Medicare and Medicaid Services
PSC – Program Support Center
FDA – Food and Drug Administration
NIH – National Institutes of Health
OS – Office of the Secretary

Department of Homeland Security

CBP – Customs and Border Patrol
CRCL – Civil Rights and Civil Liberties
NPPD – National Protection and Programs Directorate
USSS – U.S. Secret Service

Department of Veterans Affairs

OAEM – Office of Asset Enterprise Management
ORM – Office of Resolution Management
OGC – Office of General Counsel
OSP – Office of Security and Preparedness
CFM – Construction and Facilities Management

About the Committee

The Committee on Oversight and Government Reform is the main investigative committee in the U.S. House of Representatives. It has authority to investigate the subjects within the Committee's legislative jurisdiction as well as "any matter" within the jurisdiction of the other standing House Committees. The Committee's mandate is to investigate and expose waste, fraud and abuse.

Contacting the Committee

For press inquiries:

Frederick R. Hill, Director of Communications
(202) 225-0037

For general inquires or to report waste, fraud or abuse:

Phone: (202) 225-5074
Fax: (202) 225-3974
<http://republicans.oversight.house.gov>



Committee on Oversight and Government Reform
Chairman, Darrell Issa (CA-49)

2157 Rayburn House Office Building
Washington, DC 20515
Phone: (202) 225-5074 • Fax: (202) 225-3974