



# 2024

## Chief FOIA Officer Report

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.



DEPARTMENT OF EDUCATION  
OFFICE OF THE SECRETARY  
FREEDOM OF INFORMATION ACT (FOIA)  
SERVICE CENTER

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# About the Department<sup>1</sup>

The U.S. Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access. The Department accomplishes its education mission by funding programs (i.e., early intervention services and employment training programs) that provide services to children as early as birth all the way to adult learners. Many of these programs provide grants to state or local educational agencies and support students and families protected by Federal civil rights laws and other laws, including students with disabilities and those from socio-economically disadvantaged backgrounds.

Several programs prepare students, teachers, and the nation’s citizenry to engage with and succeed in an increasingly globalized world. Other programs provide grants and loans to postsecondary students and facilitate research that examines ways that states, schools, districts, and postsecondary institutions can improve America’s education system. In addition, the Department fulfills its mission through the enforcement of student privacy and of Federal civil rights laws that, among other things, provide equal access for all individuals to the programs funded by the Department.

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<sup>1</sup> Retrieved from the Department of Education’s FY 2022-26 Strategic Plan: [U.S. Department of Education Fiscal Years 2022–2026 Strategic Plan](#).

# Department Purposes<sup>2</sup>

When Congress created the Department in 1979, it established the following purposes for the agency:

- Strengthen the federal commitment to ensuring access to equal educational opportunity for every individual.
- Supplement and complement the efforts of states, local school systems and other instrumentalities of states, the private sector, public and private educational institutions, public and private nonprofit educational research institutions, community-based organizations, parents, and students to improve the quality of education.
- Encourage the increased involvement of the public, parents, and students in federal education programs.
- Promote improvements in the quality and usefulness of education through federally supported research, evaluation, and sharing of information.
- Improve the coordination of federal education programs.
- Improve the management and efficiency of federal education activities, especially with respect to the process, procedures, and administrative structures for the dispersal of federal funds, as well as the reduction of unnecessary and duplicative burdens and constraints, including unnecessary paperwork, on the recipients of federal funds.
- Increase the accountability of federal education programs to the President, Congress, and the public (Section 102, Pub. L. No. 96-88).

The Department works with state agencies, including education, health, and vocational rehabilitation, as well as local educational agencies, educational institutions, administrators, educators, parents, caregivers, students, and other stakeholders to foster educational excellence and ensure equal access to education for all students.

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<sup>2</sup> Retrieved from the Department of Education's FY 2022-26 Strategic Plan: [U.S. Department of Education Fiscal Years 2022–2026 Strategic Plan](#).

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# Message from the Chief FOIA Officer

As a Cabinet-level department that began operating in 1980, the Department of Education (ED) and its mission contribute significantly to the U.S. Government's administration and enforcement of federal laws. ED's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access. The Department's Freedom of Information Act (FOIA) program is one of the many functions that advance ED's mission.

ED's FOIA program focuses on responding efficiently and fully to requests within the statutory time limits for responding under the FOIA. As the Chief FOIA Officer, I am pleased to report that the FOIA program has continued to improve its administration of the FOIA. Throughout this March 2023 to March 2024 reporting period, ED has initiated new and built on existing efforts to increase responsiveness to requesters, promote transparency, and reduce backlogs of initial FOIA requests and FOIA appeals.

Despite increasing numbers of incoming requests and reductions in available resources, ED made several positive gains, including reducing the average age of pending requests by 31 percent over the prior year. Additionally, ED closed nine of its 10 oldest FOIA requests and closed 10 out of the 10 oldest FOIA appeals. Due to improvements in its consultation process and streamlined communications, ED reduced its consultation processing time by roughly 37 percent and began the fiscal year with zero open consultations. Further, ED revised its entire suite of letter templates, increasing efficiency of ED's operations and transparency for ED's requesters. Because ED's FOIA program follows a decentralized model, the importance of providing ample training to its FOIA community is amplified. As such, FSC hosted and provided access to a vast array of trainings throughout the year. Demonstrating its commitment to the principles of the FOIA, for the second year in a row, ED hosted a full week of department-wide events during Sunshine Week, elevating the importance of open government for all members of the Department.

I invite you to read more about these and other initiatives that ED undertook to ensure continued compliance with the FOIA in the following pages of this report. ED's FOIA program will build on these accomplishments, in collaboration with its program offices, in the years to come.

Inquiries about this report are best directed to ED's FOIA Service Center via phone at (202) 401-8365 or via email at [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov).

Deborah O. Moore, Ph.D.  
Chief FOIA Officer

# Section I: FOIA Leadership and Applying the Presumption of Openness

The guiding principle underlying the Attorney General’s 2022 [FOIA Guidelines](#) is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

## A. Leadership Support for FOIA

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency’s Chief FOIA Officer at or above this level?

**Yes. The designated Chief FOIA Officer is at the Assistant Secretary or equivalent level.**

2. Please provide the name and title of your agency’s Chief FOIA Officer.

**Deborah O. Moore, Ph.D., Chief FOIA Officer**

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

**The Department of Education (ED hereafter) has incorporated FOIA into its core mission, and FOIA milestones are embedded into its strategic plan. The [Department of Education’s Strategic Plan](#) establishes five strategic goals. In [Strategic Goal 5](#), ED commits to “Enhance the Department’s internal capacity to optimize the delivery of its mission” by managing technology, improving data access, recruiting/retaining/developing the workforce, and delivering mission outcomes through efficient acquisition management. These strategic objectives broadly mirror the Chief FOIA Officer’s vision and serve as proof of the steps the agency has taken to demonstrate its commitment to the FOIA mission. By implementing these goals throughout the agency, the Chief FOIA Officer has been able to use ED’s strategic plan as the foundation for building partnerships and coalitions among the FOIA Service Center (FSC), senior departmental leadership, and agency staff throughout ED.**

**The Chief FOIA Officer meets regularly with ED’s each Principal Office’s (PO) senior leadership to ensure understanding of and compliance with requirements under the FOIA. Further, the Chief FOIA Officer actively encourages the incorporation of meeting FOIA requirements into agency staff performance plans wherever applicable. As part of its robust, Department-wide training portfolio, the FSC conducts mandatory annual FOIA training for all political appointees to ensure awareness of their FOIA responsibilities.**

**Political leadership fulfilling FOIA responsibilities sets the example and direction for the staff they lead that FOIA is a key part of the Department’s mission.**

## **B. Presumption of Openness**

4. The Attorney General’s 2022 FOIA Guidelines provides that “agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.” Does your agency provide such confirmation in its response letters?

**Yes. ED confirms in every response letter to FOIA requesters that it has considered the foreseeable harm standard when reviewing records and invoking exemptions.**

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. If your agency tracks *Glomar* responses, please provide:

- the number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible);

**As appropriate, ED issues *Glomar* responses, responding to requesters that it can neither confirm nor deny the existence of requested records. ED tracks these *Glomar* responses. During this reporting period, ED issued 85 full *Glomar* responses. At this time, ED is unable to account for partial *Glomar* responses that were issued along with partial disclosure of records.**

- the number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).

**ED’s *Glomar* responses were issued by the following FOIA Exemptions and frequencies described below:**

- **Exemption 6: 77 times;**
- **Exemption 6 and 7(c) combined: 7 times; and**
- **Exemption 3 (20 U.S.C. § 1099c–1), 6, and 7(a) combined: 1 time.**

6. If your agency does not track the use of *Glomar* responses, are you planning to track this information in the future?

**N/A. ED tracks *Glomar* responses.**

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



In collaboration with ED’s Office of General Counsel (OGC), the FSC developed a Foreseeable Harm Checklist. The checklist incorporates prompts and questions to assist individuals responsible for reviewing records in determining whether a foreseeable harm, barring release, exists.

## Section II: Ensuring Fair and Effective FOIA Administration

The Attorney General’s 2022 [FOIA Guidelines](#) provide that “[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce.” The Guidelines reinforce longstanding guidance to “work with FOIA requesters in a spirit of cooperation.” The Attorney General also “urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency’s FOIA administration” as part of ensuring fair and effective FOIA administration.

### A. FOIA Training

1. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

**ED’s Chief FOIA Officer ensures that FOIA training is offered to agency personnel. As such, the FSC has undertaken efforts to ensure FOIA training was made available, along with multiple outreach events, throughout fiscal year 2023. Additionally, agency personnel have access to on-demand training modules, some acquired from the Department of Justice and others created by ED; these modules are available through the agency’s web-based training application.**

**In collaboration with the OGC’s FOIA attorneys, the FSC conducts multiple FOIA training sessions, including a FOIA Overview & Procedural Requirements, Agency Best Practices, mandatory New Hire FOIA Training, FOIAXpress Case Management Training, Proactive and Discretionary Releases of Information Discussions, and numerous ad hoc outreach events tailored to and driven by the needs of ED’s FOIA community of leaders, subject matter experts, and FOIA professionals. These training opportunities were presented to ED staff through a multitude of outreach efforts, including a marketing format coined the *ED FOIA Update*, a branded e-mail campaign sent to the Department’s FOIA community announcing training, outreach events, and FOIA opportunities, and relevant information.**

**During this reporting period and the first month of the new fiscal year, the Chief FOIA Officer onboarded an Outreach Director in the FSC. This position was created to design and implement a program of training that executes the Chief FOIA Officer’s vision for enhancements to the Department’s FOIA training program. An integral part of these enhancements has included solicitation of training topics from ED’s FOIA Community at**

**large, endeavoring to bring targeted FOIA training based on indicated needs and preferences during the 2024 calendar year.**

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

**Yes. In addition to the FSC staff, several hundred of ED's FOIA professionals and personnel who have FOIA responsibilities attended substantive FOIA Training during the reporting period, including training provided by the Department of Justice (DOJ). In addition, during our Annual Training and during Sunshine Week, ED provided training and education events that included prominent thought-leaders, FOIA professionals from other Federal agencies, and leaders from the Office of Government Information Services (OGIS) to increase the exposure of ED's FOIA community to ideas and trends in FOIA.**

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

**The following table outlines the type of training, a description, and date:**

	<b>Training Provider</b>	<b>Description of Event</b>	<b>Date</b>
1	ED	Principal Offices Familiarization Sessions	June, July and December 2023
2	ED	FOIA Fees	June 2023
3	ED	Principle Office Operations and Case Processing Meeting	August and September 2023
4	ED	FOIAXpress Overview Training	June 2023
5	ED	FOIAXpress Document Redaction Workshop	January 2023
6	ED	FOIA Overview (OCR-Dallas)	June 2023
7	ED	2023 ED Sunshine Week: <ul style="list-style-type: none"> <li>• Litigation-Free in '23.</li> <li>• Minimizing Your FOIA Litigation Risk.</li> <li>• Inter-Agency Perspectives on FOIA: An Unredacted Discussion.</li> <li>• FOIA and Technology.</li> </ul>	March 2023
8	ED	Reviewing and Improving ED's Search Forms	January 2024
9	ED	General FOIA Overview for new ED employees	August 2023
10	ED	Mandatory FOIA Training for Political Appointees	July 2023
11	ED	Introduction to Foreseeable Harm Analysis Tool/Checklist	May 2023
12	ED	Handling of Incoming Consultations	May 2023
13	DOJ Training	Exemption 4 and Exemption 5 Training	January 2024
14	2023 ED Annual FOIA Training	Department-wide half day training event covering the following topics presented by DOJ, OGIS, and ED FOIA attorneys: <ul style="list-style-type: none"> <li>• Procedural Requirements &amp; New Guidance.</li> <li>• DOJ's FOIA Exemptions Overview.</li> <li>• Foreseeable Harm Standard.</li> <li>• Exemption 5 Drill-down; and</li> <li>• Exemption 4 &amp; Submitters Notices.</li> </ul>	August 2023
15	2023 American Society of Access Professionals (ASAP)	ASAP National Conference	June 2023
16	DOJ Training	Virtual Meeting of the Chief FOIA Officers Council	April & November 2023
17	DOJ Training	Report Refresher Trainings	October 2023
18	DOJ Training	Virtual Advanced FOIA Training	February 2023
19	DOJ Training	Appeals, FOIA Compliance and Customer Service Training	May 2023
20	DOJ Training	FOIA Litigation Training	May 2023
21	ED	Meet/Greet with ED Procurement Policy Team	November 2023

22	ED	FOIA Operations Overview	October 2023
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4. Please provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

**ED estimates 100% of its FOIA professionals and staff with FOIA responsibilities attended substantive training during this reporting period.**

5. 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.

**N/A. ED ensured that 100% of its FOIA professionals attended substantive FOIA training at least once throughout the year.**

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency’s FOIA resources, obligations and expectations during the FOIA process?

**ED has undertaken substantial efforts to inform non-FOIA professional of their obligations under the FOIA. This is accomplished through conducting Annual FOIA Training, Mandatory Political Appointee Training, New Hire FOIA Training, and a five-day Sunshine Week series of events. These training sessions are widely promoted and open to all Departmental employees. To ensure maximum participation, the FSC initiated a department-wide communication outreach campaign well in advance of the training, resulting in excellent attendance by non-FOIA staff for each of these events. These training events are described below:**

- **New Hire FOIA Training:** The FSC, in conjunction with OGC, conducted New Hire Training to all new ED personnel. Attendees were informed of their FOIA obligations as part of ED’s onboarding process. The FSC made New Hire FOIA Training opportunities available to FOIA Professional and non-FOIA professionals alike, nearly twice last year. This training was made mandatory for new employees joining the Department.
- **ED’s Annual FOIA Training:** This event was a half-day workshop, covering various topics. It was open to all Departmental employees. In collaboration with OGIS, DOJ, and attorneys from ED’s OGC, the FSC provided substantive training on multiple topics relevant to the work of FOIA professionals and non-professionals alike.

- **ED's Annual Mandatory Political Appointee Training:** In collaboration with ED's Office of White House Liaison, the FSC hosted mandatory FOIA training for all political appointees, providing an overview and compliance requirements.
- **Sunshine Week:** ED showcased a week of FSC-hosted events, making the primary objective the raising FOIA awareness throughout the department. The purpose of a five-day Sunshine Week series of events was to expose ED's non-FOIA staff to the requirements of the FOIA, creating a culture of awareness that FOIA is everyone's responsibility. Launched by the Secretary and supported by participation of the Deputy Secretary, Sunshine Week demonstrated to non-FOIA professionals the Department's and its seniormost leadership embrace the Department's commitment to FOIA.
- **ED's Office for Civil Rights (OCR) FOIA Training:** OCR's OPEN Center provided training to OCR's regional offices on FOIA obligations three times during this reporting period. While some of the attendees had FOIA experience, some were new to the requirements and implementation of the FOIA. OPEN's FOIA team also provided a brief training on FOIA and Personally Identifiable Information (PII) to OCR's Customer Service team. Creating awareness of ED's responsibilities to create access while also safeguarding and protecting PII aligned with the Chief FOIA Officer's initiatives and messaging.

## **B. Outreach**

7. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly?

**Yes. In coordination with ED's FOIA professionals department wide, ED's Chief FOIA Officer and the FOIA Public Liaison routinely communicated with requesters concerning complex or voluminous requests; these communications often led to helping the requester formulate their FOIA request and/or clarifying or narrowing the scope of the request so requesters can receive responses more quickly.**

Please describe any such outreach or dialogue and, if applicable, any specific examples.

**ED's outreach and dialogue most often resulted from the FSC's group review and discussions about incoming requests during the FSC's daily Triage Meeting and associated processes. During the daily Triage Meeting, the FSC individually reviewed every request received the prior day and discussed them as a group. In addition to the FSC staff collectively participating in the assignment of requests to the correct program office, these meetings also afforded opportunities to carefully review requests to determine if the scope of records was reasonably described and/or to clarify or narrow the scope. The following are a few of ED's outreach and dialogue samples, among many:**

- **Narrowing and Clarifying:** The FOIA Public Liaison organized a call between a FOIA requester and the Subject Matter Experts (SME) from OGC. The call was scheduled to discuss the broad scope of a FOIA request for which a similar request had recently been processed and disclosed. The call enabled the requester to explain in more detail the information sought, and it was determined that the previously records would fulfill the request. This phone call resulted in the Department being able to respond to the request quickly and within the statutory time limit.
- **Formulating and Clarifying:** ED received 13 requests from one organization that sought any/all communications involving numerous search terms, leading to voluminous datasets pertaining to ED senior staff. The FOIA Public Liaison consolidated the requests on a spreadsheet and reached out to the requester to discuss each FOIA request. By showing the requester all the requests in one document, it helped the requester identify administrative errors in their submissions and afforded an opportunity for the requester to reformulate the request. This phone call resulted in the requester clarifying half of the requests and realizing that others were submitted to ED in error and were intended for other federal agencies. This clarifying and proactive outreach directly impacted the requester's ability to locate information outside of ED.
- **Formulating and Narrowing:** ED received a complex FOIA request seeking at least two dozen datasets, encompassing a wide variety of records related to the administration of Elementary and Secondary School Emergency Relief (ESSER) funds. The FSC brokered a phone call between the requester and ED's SMEs familiar with the responsive records. The SMEs were able to explain the categories of records pertaining to ESSER, thus assisting the requester with formulating a reasonably described request, which not only narrowed the scope drastically, but also led to an efficient reasonably calculated search. As a result of this discussion, ED was able to satisfy the need of the requester by providing one 32-page document.
- **Fee Estimate and Authorization to Pay:** ED received a broadly written FOIA request and the search for records located several boxes of potentially responsive records, resulting in a large fee estimate, beyond the indicated fee limit. The FSC contacted the requester to discuss fees and offer the requester the option to narrow the scope of the request or increase the fee authorization. The requester decided to narrow the scope of the request and appreciated greatly the option to do so. This outreach effort resulted in a drastically narrowed request and more efficient processing times. During the discussion with the requester, it was determined that one single document would fulfill the request.
- **Fee Waiver Criteria:** ED received an inquiry from a requester seeking information about his fee waiver determination. The Chief FOIA Officer engaged closely with the requester to help him understand ED's determination of his fee waiver request. The Chief FOIA Officer explained the fee waiver criteria, how to remedy the defects of the fee waiver request, and provided additional information on the requester's right to appeal, should he wish to avail himself of that process. The requester

**appreciated the phone call and was likely surprised that the Chief FOIA Officer was indeed the person returning his phone call.**

8. Outside of the standard request process or routine FOIA Liaison or FOIA Requester Service Center interactions, did your FOIA professionals engage in any outreach or dialogue, with the requester community or open government groups regarding your administration of the FOIA? For example, did you proactively contact frequent requesters, host FOIA-related conference calls with open government groups, or provide FOIA training to members of the public?

**Yes. ED's FOIA professionals engaged in outreach and dialogue with the requester community and open government groups, outside of the standard request process, by providing information about the requirements of the FOIA and associated resources to students and parents.**

Please describe any such outreach or dialogue and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

**ED's FOIA professionals engaged in significant outreach with the requester community or open government groups, outside of the standard FOIA request process for accreditation inquiries and student privacy questions. In addition to processing FOIA requests, the FSC is often the destination for individuals and groups wanting to confirm whether their institution of higher learning is accredited or not. Since inquiries are not actionable pursuant to the FOIA, ED established a website that allows inquirers to find out this information outside of the FOIA process, see generally: <https://www.ed.gov/accreditation?src=rn>.**

**The same is true for questions about student privacy—while agencies are not required to answer questions, the FSC nonetheless engaged with students, parents, and third-party representatives by responding to their inquiries and redirecting them to informational resources, such as: <https://studentprivacy.ed.gov/audience/parents-and-students>, and usually outside of the FOIA process.**

9. 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 the number of times requesters sought assistance from your agency's FOIA Public Liaison during Fiscal Year 2023 (please provide a total number or an estimate of the number for the agency overall).

**ED notified all requesters about the services provided by the agency's FOIA Public Liaison, along with contact information, in every determination letter. During this reporting period, requesters sought assistance from ED's FOIA Public Liaison approximately 210 times.**

## **C. Other Initiatives**

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

**Yes. ED evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands. The Chief FOIA Officer requested and received funding for two Senior FOIA Analysts and one senior-level director within FSC. Further, the FSC has submitted a comprehensive budget request for additional positions to be added in fiscal year 2025, if approved.**

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

**ED uses data and processing metrics to ensure efficient management of the FOIA workload to determine trends, streamline processes, enhance quality, and improve processing times. All FSC staff performance plans include focused, outcome-based metrics tied to case processing and quality assurance measures. The following are examples of case management reports and process metrics:**

- **Weekly Metrics Report**: This report provides data on the three key processing elements; 1) cases received; 2) cases closed; 3) cases pending for FOIA requests, Privacy Act Requests, appeals, and consultations. The report also provides prior year data for comparison and provides weekly status updates of ED's ten oldest requests, appeals, and consultations.
- **Backlog Report**: FSC Leadership uses the Backlog Report to identify trends, guide discussions with the program offices on challenges and obstacles, to brainstorm solutions, and determine potential mitigation measures.
- **Monthly Post-Closure Review**: FSC Leadership every month conducts a de-novo quality assurance review on a random sample of 20% of cases closed in the prior period. This internal control effort allows FSC Leadership to determine if there are errors or error trends that need to be addressed.
- **Dashboard Reports**: The OCR OPEN Center relies on FOIAXpress dashboard reports to track FOIA requests, appeals, and the progress of regional work. The OPEN has also developed its own excel trackers which are used to documents all requests with the office, their status, age, next steps needed, etc. These trackers are often cross-referenced with FOIAXpress reports to ensure consistency/accuracy. OPEN's internal trackers are used for all requests, backlog requests, appeals, 2<sup>nd</sup> layer reviews, etc.



- **Workload Reports:** OCR-Atlanta uses workload reports and other data metrics to ensure efficient processing and manage time limit requirements, which also helps manage the regionals office's FOIA workload.

12. Optional -- If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

**ED has undertaken initiatives to ensure fair and effective FOIA administration by reviewing and changing its full suite of template letters using Plain Language to promote transparency, designing and implementing the use of a Foreseeable Harm Checklist, and initiating a full revision of its search form through the use of a focus group to pilot the change. Each of these initiatives are discussed below:**

- **Foreseeable Harm Checklist:** FSC designed, implemented, and trained its FOIA community on the use of a Foreseeable Harm Checklist, which facilitates the process for SMEs and FOIA professionals ensuring that when contemplating the use of certain exemptions, the requirement that an articulable foreseeable harm does exist.
- **Revised Templates:** The FSC, working with ED's OGC and consulting with OGIS, revised all correspondence template letters to be clearer and more concise for our requester community. ED also made changes to reduce the possibility of error in template usage.
- **Revised Search Form and Focus Group:** ED created a new internal search form that custodial offices will be required to complete as formal documentation of their search. The FSC is currently testing the form with focus groups within ED.

## Section III: Proactive Disclosures

The Attorney General’s 2022 [FOIA Guidelines](#) emphasize that “proactive disclosure of information is . . . fundamental to the faithful application of the FOIA.” The Guidelines direct agencies to post “records online quickly and systematically in advance of any public request” and reiterate that agencies should post records “in the most useful, searchable, and open formats possible.”

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

**ED completed the following steps to identify, track, and post (a)(2) proactive disclosures: The FSC regularly collaborated with program offices across the Department to identify records for proactive disclosure. These records are identified using the electronic search function of the FSC’s case management tracking system, which queries frequently requested records. ED’s FSC also identifies records for proactive disclosure during the daily intake triage meeting.**

2. How long after identifying a record for proactive disclosure does it take your agency to post it?

**Once records are identified, they are posted to ED’s reading room within a few days. However, this frequency was sometimes delayed due to hurdles such as size and/or the volume of the records, and/or the amount of time necessary to remediate the document to meet accessibility standards, such as Section 508 compliance.**

3. Does your agency post logs of its FOIA requests?

- If so, what information is contained in the logs?
- Are they posted in CSV format? If not, what format are they posted in?

**Yes, ED posts FOIA logs to the Department’s FOIA Reading Room as an Excel spreadsheet monthly. The log consists of the request tracking number, requester’s name, organization, received date, request description, exemption cited, and final disposition for requests closed during the reporting period.**

4. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

### Departmental

- [Resources for Preventing and Addressing Antisemitism in Schools](#)
- [Nation’s Report Card](#)

### Office of the Secretary

- [Return to Repayment Protections Memorandum](#)

### Office for Civil Rights

- List of Open Title VI [Shared Ancestry Investigations](#)
- [Resources for LGBTQI+ Students](#)
- [2020-21 Civil Rights Data Collection \(CRDC\)](#)

### Federal Student Aid

- [Decision Memo](#): Use of Secretary's Compromise Authority for Remediating Potential Harm to Borrowers Caused by Return to Repayment servicing Errors
- [Data Center](#)
- Grand Canyon University: [Notice of Fine Action](#) and [Provisional Program Participation Agreement](#)
- [Free Application for Federal Student Aid \(FAFSA\)](#) update

### Office of Special Education and Rehabilitative Services

- [Guidance to Improve Equal Educational Opportunity for Children with Disabilities](#)

### Office of Elementary and Secondary Education

- [Bipartisan Safer Communities Act FAQs](#)
- [Elementary and Secondary Education Act \(ESEA\) Guidance](#)
- [ED Data Express](#)

5. 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?

**Yes. ED is taking steps to make posted information more useful to the public for the community of individuals who regularly access ED's website.**

6. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

**The following are examples of improvements and steps ED has taken to post information in open, machine-readable and machine-actionable formation:**

- [Data.ed.gov](https://data.ed.gov) is part of the Department of Education's (ED) Open Government initiative to make high-value data sets publicly available in user-friendly, machine-readable formats. Data.ed.gov organizes, makes accessible, and highlights data from ED's diverse set of programs. It serves as a one-stop shop for education data, allowing practitioners, researchers, and the public to access data that can inform their work in classrooms and communities across America.
- The [National Center for Education Statistics](https://nces.ed.gov/ipeds/) recently released the [Integrated Postsecondary Education Data System \(IPEDS\)](https://nces.ed.gov/ipeds/). IPEDS gathers information annually from U.S. college, university, and technical and vocational institutions eligible to participate in any of the Title IV federal student financial aid programs.
- The [Database of Accredited Postsecondary Institutions and Programs \(DAPIP\)](https://nces.ed.gov/ipeds/data/dapip/) contains information report the Department of Education directly by recognized accrediting agencies and state approval agencies.

7. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

**Yes. ED's FSC routinely engaged program office staff through meetings and training where proactive postings are encouraged. Posting to ED's FOIA Reading Room requires interaction between the program office and the FSC webpage content manager.**

8. Optional -- Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

**ED continues to make headway in regularly improving its practice of proactive disclosures. However, workload and human capital realities make meeting accessibility standards challenging. Nonetheless, the FSC recently developed a preliminary plan to remediate its own documents using an agency-resourced application that scans/evaluate a document's accessibility, identify accessibility failures, and indicates necessary changes in accordance with Section 508 of the Rehabilitation Act of 1973.**

## Section IV: Steps Take to Greater Utilize Technology

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's 2022 [FOIA Guidelines](#) emphasize the importance of making FOIA websites easily navigable and complying with the [FOIA.gov](#) interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

**Yes. Throughout the reporting year, the FSC meets regularly with internal stakeholders in which FOIA-related technology is discussed.**

2. Please briefly describe any new types of technology your agency uses to support your FOIA program.

**During this reporting period, ED began using the following tools:**

- 1. CommonLook: The FSC began using a plug-in tool to scan and evaluate accessibility compliance in responsive documents before posting to the public domain.**
- 2. Shared Microsoft Teams Channels: The FSC used shared Team channels as dedicated digital workspaces that promote collaboration, file sharing, and open communication between team members.**
- 3. Case Management Queues: The FSC created multiple queues within ED's case management system that provides "at a glance" management dashboards. These queues have streamlined quality reviews and improved processing times.**

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

**Yes. ED uses Veritas (Clearwell) and Office 365: The FSC's Administrative Search Unit uses these tools to conduct enterprise-wide Boolean and Keyword searches, using syntax search language and to manage the resulting document production. This resource reduces the agency's human capital burden of performing manual searches.**

4. OIP issued [guidance](#) in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

**Yes, ED routinely reviews its FOIA website.**

5. Did all four of your agency's [quarterly reports](#) for Fiscal Year 2023 appear on FOIA.gov?

**Yes. All four quarterly reports were posted and appear on FOIA.gov.**

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2024.

**N/A. ED successfully posted all quarterly reports on FOIA.gov.**

7. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2022 Annual FOIA Report and, if available, for your agency's Fiscal Year 2023 Annual FOIA Report.

**ED's raw statistical data can be found [here](#).**

8. In February 2019, DOJ and OMB issued joint [Guidance](#) establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

**Yes. All components are in compliance with the established interoperability standards.**

9. Optional -- Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

# Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs

The Attorney General’s 2022 [FOIA Guidelines](#) instruct agencies “to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs.” Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

## A. Remove Barriers to Access

1. Has your agency established alternative means of access to first-party requested records, outside of the typical FOIA or Privacy Act process?

**Yes. ED has established an alternative means of access to first-party requested records outside of the typical FOIA and Privacy Act processes.**

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

**ED established a website that allows inquirers to find out accreditation information outside of the FOIA process, see generally: <https://www.ed.gov/accreditation?src=rn>. ED also engaged with students, parents, third-party representatives by responding to their inquiries and redirecting them to informational resources, such as: <https://studentprivacy.ed.gov/audience/parents-and-students>, and usually outside of the FOIA process.**

3. Please describe any other steps your agency has taken to remove barriers to accessing government information.

**During this reporting period, the Chief FOIA Officer reviewed delegations of authority, such as delegated denial authority, to determine how redelegations, modifications or new delegations might improve efficiencies and reduce barriers to accessing government information.**

## B. Timeliness

4. For Fiscal Year 2023, 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 2023 Annual FOIA Report.

**The average number of days was 9.46.**

5. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2023 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

**N/A. ED's number of days to adjudicate requests for expedited processing was less than ten calendar days.**

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

**Yes. ED utilizes a separate track for simple requests.**

7. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2023?

**No. ED's processing time for simple requests for Fiscal Year 2023 was not twenty working days or fewer.**

8. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

**No. The simple track average processing time did not decrease compared to the previous Fiscal Year.**

9. Please provide the percentage of requests processed by your agency in Fiscal Year 2023 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

**During Fiscal Year 2023, 32% of the 2,385 requests processed were placed in the simple track.**

10. 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?

**N/A. ED tracks simple requests separately.**

## **C. Backlogs**

### **Backlogged Requests**

11. If your agency had a backlog of requests at the close of Fiscal Year 2023, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?



**No. ED's FOIA backlog did not decrease.**

12. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2023 than it did during Fiscal Year 2022?

**Yes. ED processed 2,385 requests during Fiscal Year 2023 compared to 1,462 requests in Fiscal Year 2022.**

13. If your agency's request backlog increased during Fiscal Year 2023, please 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)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible

**ED experienced a few contributing factors that prevented the Department from reducing the backlog, including a significant increase in the number of new requests. In addition, ED's FSC experienced a loss of resources in that its contract staff was reduced by 80%. The FSC's FOIA program continued to make numerous procedural changes during this reporting period intended to increase efficiency. These resource and procedural changes require near term adjustments and training for staff.**

14. 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 2023. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

**The percentage of requests that make up the backlog of the total number of requests received by ED in Fiscal Year 2023 is 70.2%.**

## **Backlogged Appeals**

15. If your agency had a backlog of appeals at the close of Fiscal Year 2023, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?

**No. ED's appeals backlog did not decrease.**

16. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2023 than it did during Fiscal Year 2022?**No. ED did not process more appeals during Fiscal Year 2023 than it did during Fiscal Year 2022.**

17. If your agency's appeal backlog increased during Fiscal Year 2023, please 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)
- Litigation
- Any other reasons – please briefly describe or provide examples when possible

**ED focused on closing the 10 oldest appeals during Fiscal Year 2023, which were complex in nature. Although this approach resulted in the closure of the 10 oldest, the appeals backlog grew by one appeal.**

18. 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 2023. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2023 and/or has no appeal backlog, please answer with "N/A."

**The percentage of appeals that make up the backlog out of the total number of appeals received by ED in Fiscal Year 2023 is 77.7%.**

## **D. Backlog Reduction Plans**

19. In the 2023 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2022 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your 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 2023?

**Yes. ED implemented a backlog reduction plan last year. Unfortunately, ED was unable to achieve backlog reduction in Fiscal Year 2023.**

20. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2023, please explain your agency's plan to reduce this backlog during Fiscal Year 2024.

**ED intends to reduce the backlog during Fiscal Year 2024 with established processing goals throughout the year. Continuous monitoring of cases processed will provide FSC**

**leadership insight into the progress. Also, improved performance metrics have been added to ED's FOIA professionals' performance plans.**

**The Department continues to provide FOIA training within ED to reach more non-FOIA professionals, ensuring these subject matter experts understand their obligation to search for and produce responsive records timely.**

## **E. Reducing the Age of Requests, Appeals, and Consultations**

### **Ten Oldest Requests**

21. In Fiscal Year 2023, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2022 Annual FOIA Report?

**No. ED did not close the ten oldest pending FOIA requests.**

22. 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 2022 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

**ED closed 9 of the 10 oldest requests by the end of the fiscal year.**

23. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

**The FSC continues to meet with program offices throughout the fiscal year to assist them with developing individual backlog plans.**

**During this reporting period, the FSC conducted familiarization meetings with program offices within ED. The purpose of these meetings is to help the FSC learn more about the program office and their records. Having this knowledge of the responsive records will improve the timeliness of the record review by the FSC staff. In addition, these meetings afforded FSC the opportunity to reinforce program office staff understanding of FOIA responsibilities and ED processes and procedures for meeting them.**

### **Ten Oldest Appeals**

24. In Fiscal Year 2023, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2022 Annual FOIA Report?

**Yes. ED closed the 10 oldest appeals.**

25. 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 2022 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A.

26. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

**The FSC met with program offices throughout the fiscal year and assisted them with developing individual backlog plans.**

## **Ten Oldest Consultations**

27. In Fiscal Year 2023, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2022 Annual FOIA Report?

**Yes. ED closed the 10 oldest consultations.**

28. 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 2022 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A.

## **Additional Information Regarding Ten Oldest**

29. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2024.

**ED was unable to close one of the ten oldest pending requests this Fiscal Year. This request was complex and consisted of a voluminous number of responsive records, involving several external consultations.**

**ED is confident it will be able to close the 10 oldest requests during the current Fiscal Year. ED’s plan will be to continue meeting with the assigned program offices and follow up on developed individual backlog reduction plans. These meetings allow the FSC to understand the challenges the program offices are facing and assist as needed.**

## **F. Additional Information about FOIA Processing**

30. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency’s overall FOIA request processing and backlog. If possible, please indicate:

- The number and nature of requests subject to litigation
- Common causes leading to litigation
- Any other information to illustrate the impact of litigation on your overall FOIA administration

**Yes. For this reporting period, 17 FOIA requests became the subject of litigation. Constructive denials were the most common issue leading to litigation, causing a ripple effect, and making it even more difficult for ED to make subsequent release determinations within the statutory timeline. With limited resources and an already stretched-thin staff, responding to litigative requirements negatively impacted the Department's ability to keep pace and consequently was a significant factor in the growing backlog.**