

DEPARTMENT OF VETERANS AFFAIRS



Congressionally Mandated Report

First Report to Congress on the Cleland-Dole Act, Section 406, contained in the Consolidated Appropriations Act of 2023 (P.L. 117-328) – Plan for Reduction of Backlog of Freedom of Information Act Requests

June 2023

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First Report to Congress on the Cleland-Dole Act, Section 406, contained in the Consolidated Appropriations Act of 2023 (P.L. 117-328) – Plan for Reduction of Backlog of Freedom of Information Act Requests

Executive Summary

On December 29, 2022, President Biden signed the Consolidated Appropriations Act, 2023, P.L. 117-328, which included the Cleland-Dole Act – Division U, Title IV, Section 406 – Plan for Reduction of Backlog of Freedom of Information Act (FOIA) Requests. This Act requires the Secretary of Veterans Affairs to submit an initial report to the House and Senate Committees on Veterans' Affairs containing information relating to establishment of a plan to improve compliance with the FOIA and to incorporate technology improvements. This report fulfills that requirement.

The FOIA was signed in 1966 and designed to provide an effective method for individuals to request Federal records. The FOIA has been amended many times over its history; however, it has always kept this portion of President Johnson's signing statement at its core:

“A democracy works best when the people have all the information that the security of the Nation permits. No one should be able to pull curtains of secrecy around decisions which can be revealed without injury to the public interest.”¹

FOIA has grown from a much celebrated and little-used statute to over 900,000 unique requests received in fiscal year (FY) 2022 as reported to the Department of Justice (DOJ). Over the years, VA has seen increases and decreases in numbers of requests although the complexity generally trends up as the public gains in understanding and breadth of records sought. The statute requires response within 20 days for most requests. This requirement persists despite the explosion in both records created and maintained by the Federal Government and the expectations of the requester community. While VA was able to process “simple track” requests in an average of just 16.63 days in FY 2022, like many agencies, VA struggled to meet the 20-day requirement with “complex track” requests taking an average of 65.44 days. Because of this challenge, VA ended FY 2022 with 824 backlogged cases or 4% of total cases processed in FY 2022.

This report provides an introduction and background of FOIA in VA and covers the items identified in the Act in the order outlined by the text: improving and acquiring technology; efficiencies in procedures, policies and systems; plan schedule; root cause analysis; and finally legislative recommendations. The report provides an enterprise perspective on the decentralized program and reflects on publicly available information

¹ Statement by the President Upon Signing the “Freedom of Information Act.” July 4, 1966. Accessed at The American Presidency Project here: <https://www.presidency.ucsb.edu/documents/statement-the-president-upon-signing-the-freedom-information-act>.

to illustrate VA FOIA statistical information as compared to FOIA in other elements of the Executive Branch.

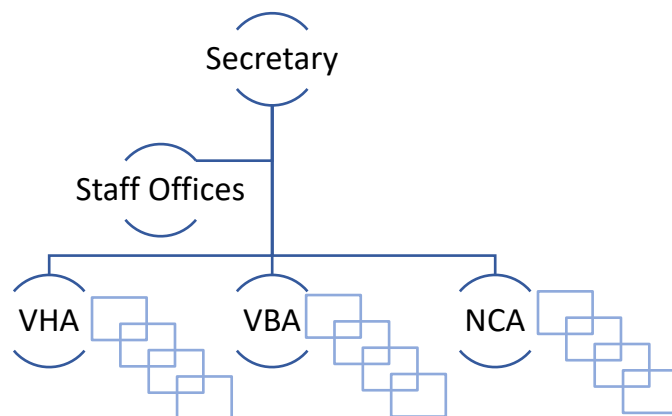
In compliance with the Act, this report is submitted to the Senate and House Committees on Veteran's Affairs by June 27, 2023, and will be posted on the VA website within 30 days following submission. This is the first in a series of annual reports with expected publication of required updates annually in the last week of June through 2027.

Introduction

The Department of Veterans Affairs (VA) is led by the Secretary of Veterans Affairs (SECVA) and organized into Administrations and Staff Offices. The Department has three Administrations that provide for the delivery of services and benefits, seven Assistant Secretaries and five key officials: the General Counsel, the Chairman of the Board of Veterans' Appeals, the Chief Acquisition Officer, the Chief Veterans Experience Officer and the Inspector General. These officials advise and support the SECVA, the Administrations and Staff Offices that provide specific assistance to the SECVA.

The three Administrations are Veterans Health Administration (VHA), Veterans Benefits Administration (VBA) and National Cemetery Administration (NCA). The head of each Administration reports to SECVA. These Administrations give centralized program direction to their own field facilities, which provide diverse program services to Veterans and their families across the globe. Further, each Administration has Central Office components that support the Administration's operations. This organizational structure, depicted in Figure 1 below, reflects a basic management approach of centralized policy direction, complemented by consistent decentralized execution for nearly 400,000 employees.

Figure 1



VA is committed to operational excellence in serving Veterans and the public through the Department's FOIA Program, 5 U.S.C. § 552. The appointed VA Chief FOIA Officer establishes FOIA policy and provides oversight of the Department's FOIA Program. A list of key terms is provided in Appendix 1. Over the past 5 years, VA has processed over 100,000 FOIA requests. Although the numbers do not tell the entire story, they do demonstrate VA's commitment to serving Veterans and the public. The VA FOIA Program historical operational model is one of functional decentralization, although recently exercised centralization pilot efforts show potential promise in finding greater efficiencies.

Conceptually, decentralization places responsibility at the lowest level, which empowers personnel closest to information creation to work with our FOIA requesters. However, this frequently results in FOIA as a collateral, instead of primary or full-time duty at our many facilities and locations around the world. Over time, the professionalization in a full-time FOIA workforce has yielded greater understanding of the legal aspects of FOIA processing and potential increase in consistent information release not possible with a collateral duty or a part-time FOIA workforce. Historical and pilot information is discussed below along with graphical representations of datasets related to ongoing FOIA processes in VA.

Following passage of P.L. 117-328, VA created a Section 406 cross-Administration Working Group (SEC 406 WG) designed to develop a plan for improved compliance and prepare the Department's response to the new requirements. The SEC 406 WG developed an enterprise data call on FOIA topics, which was designed to gather information not otherwise captured through routine FOIA reporting. VA created a FOIA Council (FOIAC) in June 2022, with membership consisting of Administration program managers and the VA Staff Office FOIA Service Director serving as chairperson. The FOIAC was created during an organizational restructure emphasizing a stronger central office for VA FOIA policy. This reorganization also included a revision to VA's FOIA directive in late 2021. With appropriate senior level oversight of the central program and an engaged VA Chief FOIA Officer, FOIA compliance is improving as reported in the 2022 Annual FOIA Report to the DOJ Office of Information Policy. We are proud to outline a plan for continued improvements in VA FOIA compliance over the coming years as we execute the requirements of 5 U.S.C. § 552 and P.L 117-328.

Discussion

Division U, Title IV, Section 406 of P.L 117-328, requires SECVA to submit an initial report to the House and Senate Committees on Veterans' Affairs containing information relating to establishment of a plan to improve compliance with the FOIA. The report shall include VA's comprehensive enterprise-wide efforts and initiatives taken to improve and acquire technology for searching email and electronic information, and identification of efficient procedures, policies and systems enabling those responsible for replying to requests to search and review documents.

The report shall include the following:

- a. Timelines for ensuring capability to execute the plan;
- b. Key milestones and metrics;
- c. Confirmation that the Director of the Office of Government Services (OGIS) has been asked to assess VA FOIA compliance;
- d. Report submission to the Senate and House Committees on Veterans' Affairs no later than June 27, 2023;
- e. Report posting on VA website within 30 days following submission; and
- f. An annual report on the implementation, updates or changes and compliance information from OGIS through 2027.

The reporting period this year is December 29, 2022, to June 27, 2023². To prepare this report, information was obtained from VHA, VBA, NCA and VA's Central Staff Offices. The Administrations and Staff Offices are responsible for ensuring their programs and activities are compliant with FOIA. The VA Chief FOIA Officer, who is also the Chief Information Officer (CIO), establishes the policy and provides oversight of the Department's FOIA Program. The VA CIO is also responsible for executing technological improvement and acquisition capabilities required in the legislation. However, the CIO must also balance the requirements of the Administrations, Assistant Secretaries and Key Officials along with other legal requirements in executing policy, oversight and improvement activities.

Background

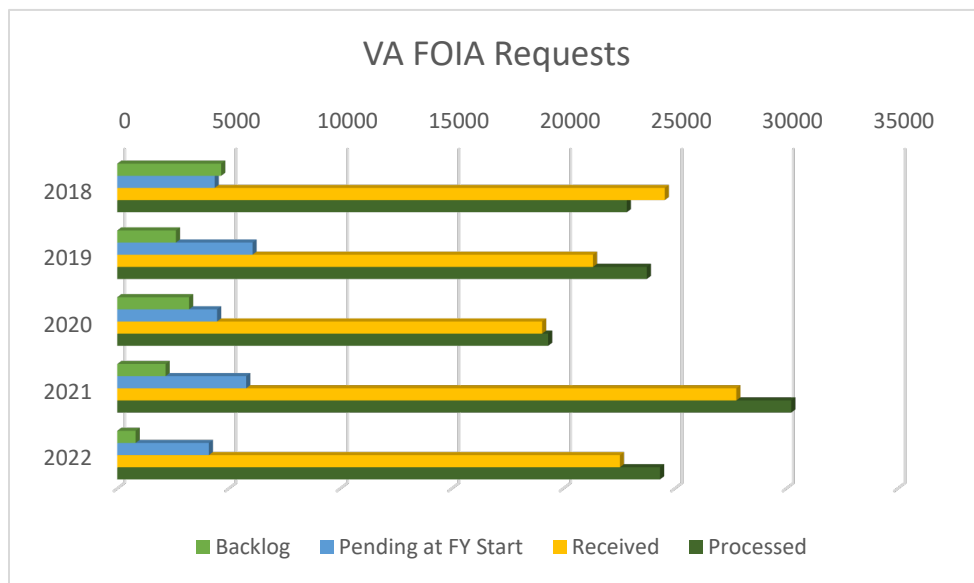
- The FOIA data for this report are provided in Appendix 2 and derived from the following sources: Historical FOIA Annual Report excerpted information available from the centralized government FOIA site (www.foia.gov) (**Table 1**); Excerpted information from VA's e-FOIA system, FOIA Xpress (FX) (**Table 2**); The SEC 406 WG VA-wide data call (**Table 3**); and the Chief FOIA Officer-approved Centralized FOIA Intake Pilot and Centralized FOIA Review Pilot (Pilot) (**Table 4**).
- Almost all VA FOIA requests are handled through VA's e-FOIA system, FX, for which licenses were originally acquired in 2008 and mandated use began in 2009. Some Privacy Act requests start as FOIAs and are handled through the Veterans Benefits Management System (VBMS). FX is a commercial off-the-shelf product acquired for VA FOIA case management and record processing and is the system of record for VA FOIA.
- VBMS is a workflow and claims management software solution custom-built for VBA. Most VBA field personnel who handle FOIA requests do so as a collateral

² Note – The legislation language specifically states that the initial report is due, "Not later than 180 days after the date of the enactment of this Act..." therefore actual dates were calculated for the ease of the reader. The Presidential enactment, or signing date, was December 29, 2022, making the initial and subsequent annual reports due no later than June 27th unless occurring during a leap year.

duty. When there are file problems or issues with access to FX, VA FOIA personnel will use Adobe Pro for document redaction and later upload files into FX.

- Data over the past 5 years from the centralized government FOIA site (www.foia.gov), (**Table 1**) shows VA average number of cases backlogged at the end of the FY as 2,700 and pending at the start of the FY as 4,960. VA average FOIA cases received in a FY is 23,050 and average number of cases processed per year is 24,099. On average, VA is processing more FOIA cases than requests received in a FY. Figure 2 below depicts VA FOIA requests over the past 5 years.

Figure 2



These statistics show on average by aggregating the backlog, pending and received requests, VA is not processing enough FOIA cases in any FY to reach a zero-case balance at the beginning of a FY. Root causes for this disparity are discussed later in the report.

- Additionally, the transformation in year-over-year incoming requests and corresponding complexity reflect changes in both the size of the Federal workforce and magnitude of created records that have occurred since the original law was signed in 1966. Then, a smaller Federal workforce kept paper files and folders that took more time to create and were less prolific. The concept of written electronic communications was unimaginable on the scale of business in today's world.
- In fact, the Congressional Research Service (CRS) Report number R43165, "Retaining and Preserving Federal Records in a Digital Environment: Background

and Issues for Congress, July 26, 2013”³, identified that Presidential records may be the most accurate indicator of the actual volume of Federal records. Since the National Archives and Records Administration (NARA) only retains the permanently valuable historical records from the Federal agencies, the amount of Departmental record holdings in NARA are not a true picture of the generated number of Federal records.

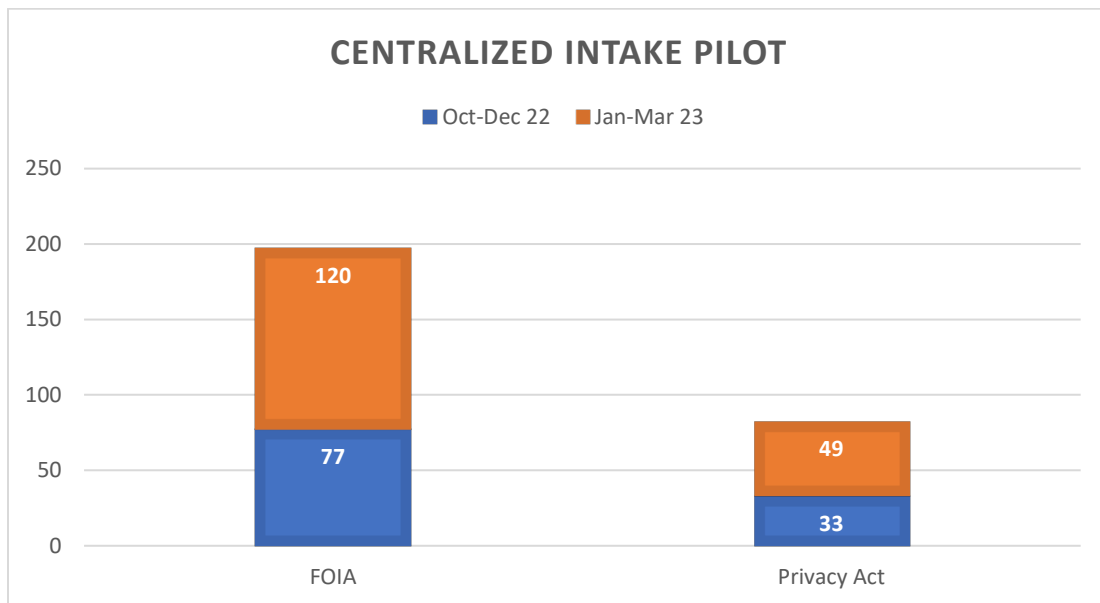
- While most Federal records are by nature transitory or temporary, the growth of permanent presidential records is illustrative of the growth of Federal records. All presidential records are provided at the conclusion of each presidential administration and many electronic ones are captured automatically. The CRS report cites data from NARA indicating that the Clinton Administration turned over 20 million emails at the conclusion of his tenure whereas the George W. Bush Administration turned over 200 million emails at the conclusion of his. The CRS report states that the Bush data was 77 terabytes and represents approximately 35 times the amount of Clinton’s data. According to the report, 200 million emails represent roughly 1 billion pages of paper records. The exponential growth of presidential email is mirrored in Federal records. If the 8-year volume increase for one presidential administration was applied across the entire Federal space, the amount of potential information subject to FOIA is enormously larger than that contemplated by President Lyndon Johnson when he originally signed the FOIA.
- Most VA FOIA cases are placed in the simple queue for processing. The e-FOIA tool (**Table 2**) indicates that over the past 5 years, the case ratio is four to one simple to complex cases. However, complexity has trended upwards over the past 2 years, which reflects both FOIA personnel with greater understanding of where to place types of incoming requests and requester sophistication in seeking broader record sets that are more complicated to review. In other words, the complex cases are becoming more intricate and are taking longer to process.
- In addition to routine FOIA case processing, VA FOIA personnel work in a supporting role for appeals and litigation requirements. The Office of General Counsel (OGC) is responsible for decisions on all appeals except those from the Office of Inspector General. OGC works with the original responding Staff Office or Administration to obtain the case file for review and consideration of the appeal. OGC also handles litigation cases and works with the DOJ and the original responding Staff Office or Administration to defend the Department.
- The SEC 406 WG Data Call (**Table 3**) shows that on average, between approximately 1.6% and 3.2% of time available to FOIA personnel for FOIA purposes is spent on appeals and litigation leaving between 97% and 99% of time for case processing. The data show that of the reporting VA Staff Offices and Administrations, 57% of them spent no time on appeals and 52% of them spent no time on litigation. However, most of these collected data points reflect a

³ Available at the following website: <https://crsreports.congress.gov/product/pdf/R/R43165/4>.

broadly dispersed workforce spending portions of their available work hours on FOIA. The SEC 406 WG Data Call shows that more than 43% of personnel conducting FOIA reviews are doing so as a collateral duty with 78% of FOIA file storage in the e-FOIA system. More discussion on the challenges associated with collateral duty FOIA responsibilities is contained in this report.

- VA central Staff Offices participated in a Centralized FOIA Intake Pilot and the Centralized FOIA Review Pilot concept, which was approved by the Chief FOIA Officer in July 2022 and started operations with the new FY. This initial Pilot did not include VHA and VBA. The Centralized FOIA Intake Pilot and Centralized FOIA Review Pilot (**Table 4**) show that approximately 70% of cases received are FOIAs and 30% are Privacy Act requests.
- A key element of successful access programs is the request is placed in the proper statutory process such as FOIA or Privacy Act, so that correct procedures are followed, and the right responsive records are quickly identified and collected. The Pilot has demonstrated that a centralized team of FOIA Professionals can expeditiously assess an influx of requests directed to multiple offices and correctly place them in a process capable of rapidly responding. The average weekly incoming case load is depicted in Figure 3 below.

Figure 3



- Additionally, the Centralized Pilot Review, or quality assurance, team proactively identified and offered mitigation strategies for in-office inconsistencies. The corrections underway will better identify and protect records exempt from disclosure under the FOIA and Veteran’s privacy through consistently applying privacy protections.

Improving and Acquiring Technology

The VA Chief FOIA Officer, who is also the CIO, establishes policy and provides oversight of the Department's FOIA Program. The VA CIO is also responsible for executing the technological improvement and acquisition capabilities required in the legislation. There are several initiatives underway under the CIO's leadership to both improve and acquire technology in VA FOIA. The ongoing initiatives represent a significant investment in architecture improvement, enterprise management and technological approaches to data management in VA.

- VA information technology (IT) enterprise operating model conversion to Office 365 cloud-based centralization started in 2021 and is ongoing. Complete changeover in active file management, file storage, electronic communications and team collaboration sites to all cloud-based is on track to be complete within the next 2 years. This conversion will centralize management of over 600,000 users and their respective files, former shared drive files and other team collaboration files and intranet websites.
- The effort underway in this transformative migration will eliminate dependence on local drives and on-premises server file management and ensure appropriate continuity of operations. It is a significant effort in digital transformation for VA and establishes a foundation of common architecture for more platform-based efficiencies necessary in FOIA.
- However, the exponential growth in data types, rates and record volumes creates challenges typically described in terms of big data. Not long ago, big data was a term describing something sized over a gigabyte but now can mean terabytes, petabytes and exabytes of information. Depending on the nature of a FOIA request, a seemingly simple email search today can result in a data set well over 10 gigabytes. Complex email searches can result in a data set over one terabyte. Commercial development has demonstrated advances in digital forensics, information retrieval and other disciplines with toolsets that make it possible to conduct operations in large cases with legally defensible, timely and cost-effective methods. Unfortunately, these are not easily replicated in the Federal space.
- A challenging example is the use of the Public Key Infrastructure Secure/Multipurpose Internet Mail Extensions (S/MIME). S/MIME requires additional steps outside of the Office 365 environment for decryption that must be complete before email files can be searched for responsiveness or processed under the FOIA. S/MIME is recognized as an effective method to protect patient rights and privacy and is a proven third-party technology; however, attempting to decrypt the information has significantly increased processing times for FOIA requests. The conversion to Office 365 will allow VA to employ the Office 365 native Azure Rights Management for email encryption instead of S/MIME. This will allow decryption within the Office 365 environment, which will reduce steps

and improve capability to access information with better timeliness for FOIA processing.

- A keystone element in FOIA programs is a comprehensive system for executing the actual FOIA processes and managing the entire lifecycle of a FOIA request. This means ingesting and exporting large common file types, video, audio and emerging technology files coupled with seamless transition from record ingestion and processing including applying redactions on sensitive information, to ultimate final product delivery directly to the requester.
- There are several commercial products designed for FOIA processes on the market and VA is exploring capabilities, adherence to approved Federal information security requirements and cost models. Frequently a product—Government or commercial—contains portions, but not all the necessary elements for the comprehensive FOIA lifecycle. For instance, the Department of Defense (DoD) created a program to transfer files up to eight gigabytes in size that allows for security assurance as well as authenticity in transmission, but it is not an integrated tool for Government-wide use.
- Multiple elements within VA identified the need for improved technology capabilities in FOIA processing before the efforts associated with the SEC 406 WG. Components across VA managed their own FOIA programs using a variety of technology tools in processing FOIA requests, such as e-discovery tools and collaborative platforms at significant aggregated costs for implementation. The use of improved technology must allow an enterprise approach beyond the more efficient searches of electronic documents and emails. The technology must create capability for quickly and accurately identifying specific responsive records, regardless of technology type, and incorporate artificial intelligence tools that can augment limited human capacity to review big data. These tools must reliably de-duplicate records and aid review processes within reasonable costs for an enterprise as large and geographically dispersed as VA.
- Today, systems designed for FOIA require advanced redaction capability including audio and video redaction with review tracking and marking, review layers, search functions, predictive analytics in information management, accurate de-duplication and multi-redaction features. Systems must be user friendly, capable of electronic fee payments, provide automatic status updates and seamless record delivery.
- Some FOIA systems are dependent on third-party software, which may or may not be integrated into the FOIA system. Video redaction is one such significant challenge area. One program office is experimenting with a product called Veritone Redact and another is trying Axon Evidence to remove audio and video sections in these file types. In addition to ongoing present issues, FOIA systems will also be challenged with emerging file types such as those potentially presented by augmented or virtual reality experiences. Records created in new

technologies adopted across VA present new hurdles in processing and review under FOIA requirements. Additionally, aside from requiring technical skill and training, multiple systems can create delays in assuring all records have been reviewed properly and accounted for in response completion.

- Ultimately, FOIA systems must also be capable of interfacing with DOJ reporting requirements including uploading raw data into www.foia.gov. Although dramatic enhancements have been made to FOIA tools over the years, allocating funds for acquiring enhanced FOIA software will streamline the overall FOIA process. Making the search, collection, organization, sorting, segregating and de-duplicating elements in the FOIA lifecycle more efficient will improve accurate case management and superior product delivery.

Efficiencies in Procedures, Policies and Systems

The VA FOIA team has shaped iterative improvements through working groups. These improvements are seen in decreased backlogs, certain types of FOIA cases with decreased processing times and enhanced coordination within Staff Office program offices. The IT element of VA FOIA improvements has also been shaped by integrated project teams designed for developing effective tools and staff that support them. These efforts in ongoing process improvements are underwritten by dedication and commitment to service to our Veterans and requesters.

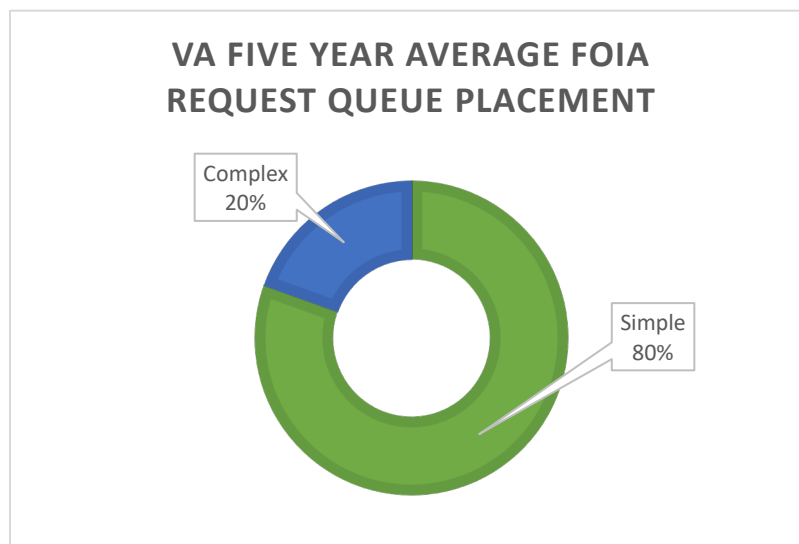
- A guiding principle in both FOIA and IT is ongoing information security precautions to ensure privacy protections under both the Privacy Act of 1974, 5 U.S.C. § 552a, and 38 U.S.C. § 5721-5728, the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, as well as other requirements in Privacy and Security Rules and the Federal Information Security Modernization Act of 2014, P.L. 113-283. A key element of the overall IT migration is to retain security of electronic transmissions, storage and retrievability. VA takes its responsibility to secure information seriously and has employed encryption tools to secure information in transmission. These safeguards often result in delays in decryption for FOIA purposes because there is a limited pool of personnel authorized to engage in decryption and the computing mechanics are resource intensive.
- Although VA IT centralization may provide increased efficiencies through aggregated information searches it also increases the risk of potential insider threat through misuse of confidential information. VA employees who have the IT training and technical capability to execute searches, write code for more complex searches, execute decryption and function as superuser administrators will have more information sources available to them in the ongoing consolidation. Effective controls and auditing will need to be implemented to maintain information integrity and confidentiality.

- The technical skills, certifications and experience IT professionals possess are different than public-facing review and exemption skills FOIA professionals possess. FOIA is frequently described as an art and a science since it deals with application of the law that is subject to experience and contextual understanding. The application of judgement to redact appropriate material while releasing as much as practical requires different skillsets than those for coding and technical IT certifications. VA FOIA experts estimate that it takes 12-18 months from the time of employee onboarding to independent capability as a FOIA Officer and even longer if the employee does not work in FOIA full time. Carrying the functionality of the term “FOIA Professional” requires not only taking training from recognized sources such as the DOJ, the American Society of Access Professionals, or Department/Agency central offices, it means practicing alongside more experienced personnel and working closely with Federal attorneys who understand and practice within FOIA.
- There is no formal degree or certification program that provides a credential or a certification, which means there is a great deal of time invested in on-the-job training and developing expertise by being a consistent and regular practitioner. The lack of a single Federal e-FOIA system also means that even if FOIA staff are hired away from other agencies, they may not have experience with the new agency’s e-FOIA system and must spend time learning and understanding how the system works. Proficiency is developed through use of a system and learning its nuances requires practice and time, as with any other software.
- VA enterprise IT centralization effort is occurring under the same senior leadership as the FOIA central Staff Office program. However, the staff report through different organization sub elements, which are aligned with technical skill sets managed by senior personnel within those professional fields. There may be additional efficiencies gained by aligning these central IT and FOIA elements more closely; however, the IT effort and personnel alignment is not mirrored on the FOIA side. IT personnel are centralized whereas FOIA personnel are spread across the entire VA enterprise and report to Administrations and elements outside of the FOIA central Staff Office program office. There could be throughput or capacity augmentation by both increasing staff resources and improving networks and technical processing bandwidth. Additionally, the burden of broadly searching records could be lessened by adding more personnel with appropriate IT certifications to the centralization effort already underway. However, FOIA production also requires capacity augmentation of full-time FOIA Professionals who are consistently engaged in FOIA and not focused on other duties.
- Currently, Staff Offices and Administrations search their own files, although administrative superusers may be able to search more broadly at the first instance. Although, an internet-like search-engine capability for easy global searches in response to both FOIA and Privacy Act requests would be an incredible tool, Federal records are neither structured like the global Internet,

nor containerized and tagged in a way that makes that kind of simplicity possible. Concerns that file naming conventions and structure do not lend themselves to broad searches by those unfamiliar with the records remain high. This retrieval knowledge is one reason why searches historically are tasked to the offices that create the records. In fact, multiple offices frequently task individual users to search emails and files when requesters make by-name requests for files related to, or created by, VA employees who remain employed by the Department.

- During FOIA case intake, FOIA professionals assess the likelihood of complexity versus simplicity in record acquisition and processing then place the request in the simple or the complex queue. Occasionally, requesters seek expedited processing and cases placed in that queue historically represent less than 0.2% of VA FOIA caseload. A case can be moved from one queue to another at any point in the process although most cases are placed, and complete processing, in the simple queue as depicted in Figure 4 below. Should a FOIA request be moved to a different queue, it usually occurs at the beginning of the processing stage as a result of a large discrepancy in the expected versus actual responsive record volume or complexity. Typically, a FOIA requester will be engaged to discuss significant changes in record volume or complexity before moving the request from the queue in which the case was originally placed.

Figure 4

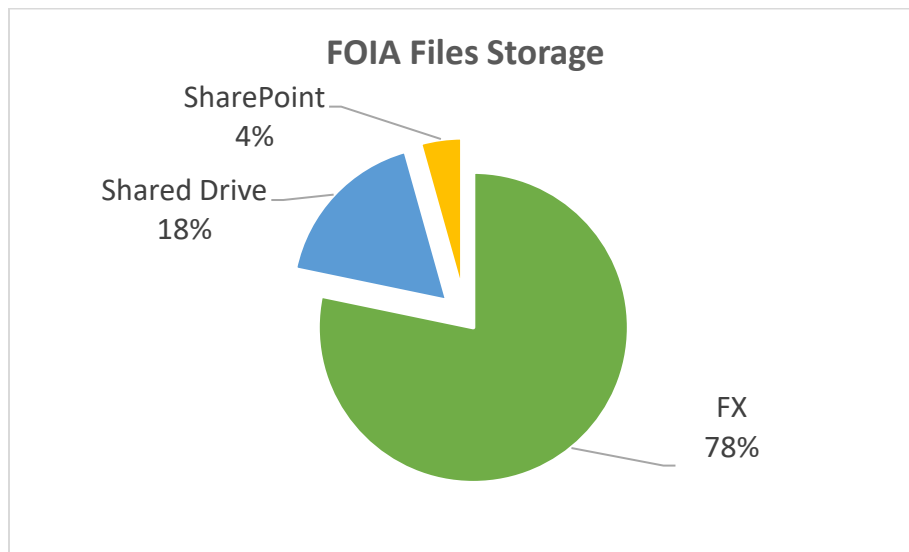


- Once a case is in the processing stage, there are additional steps to acquire and ingest records into the e-FOIA tool and begin review. VA was historically a paper-centric Department, but over the years has migrated to becoming largely electronic-based. There remain offices with dedicated paper files, so ingesting is occasionally as basic as scanning files into .pdf form and uploading into FX.
- Other native file types such as raw email, spreadsheets, audio or video files, pictures and social media collections present challenges for a system generally

designed for files converted into .pdf. VA has disseminated requests for information on systems designed for integrated processing and intends to acquire additional technological tools designed for digital native processing. It is imperative for VA's FOIA program success.

- Once responsive records are located, the primary location for file storage is in the e-FOIA system, FX. As depicted in Figure 5 below, some VA elements store files on their secured shared drives or SharePoint sites so that access is limited while the files are being reviewed and internal quality assurance checked. Some portions of VA files are sensitive attorney-work products and other files that by governing policy cannot be stored in a general system until prepared for release review. Given the span of personal information and healthcare related information in VA files, this separation layer is necessary to protect Veterans and employees in conducting routine Departmental business outside of the FOIA processes.

Figure 5

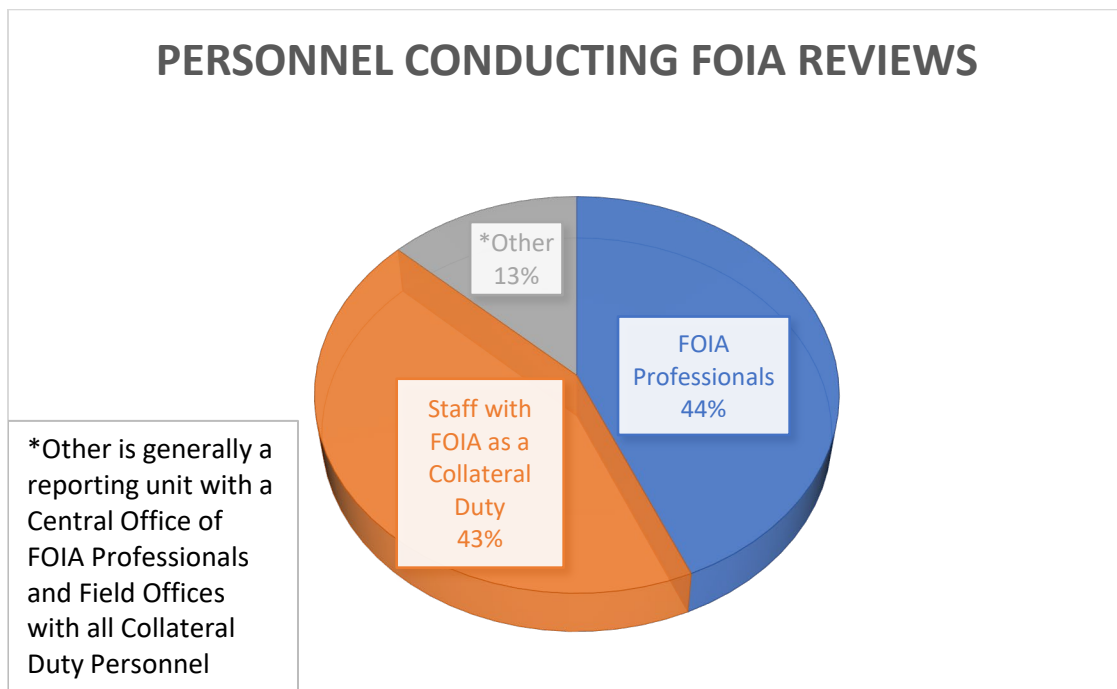


- However, most files reside in the e-FOIA system of record and are fully processed within FX prior to final release to the requester. The e-FOIA system provides the capability to deliver released electronic files directly to FOIA requesters which meets VA intent to improve the Veteran and customer experience. This electronic capability also ensures data legitimacy and security of the files for requesters.
- One of the items recommended to the SEC 406 WG is that regardless of a user's status, the e-FOIA system should be fully integrated. The conceptual implementation is that non-FOIA personnel could be tasked through the system, as well as provide additional relevant records directly into it without having to execute a middle step of placing the files somewhere for the FOIA personnel to

upload for processing. Another recommendation to the SEC 406 WG is that the IT professionals should be required to place search results in the e-FOIA system.

- As depicted in Figure 6 below, the current personnel structure for conducting FOIA reviews represents a conglomeration of professions. FOIA professionals—those in the Government personnel series 0306 (information management) spend nearly all their time working in FOIA yet only represent approximately 44% of personnel conducting review. At least 43% of personnel conducting FOIA review are staff with FOIA as a collateral duty, meaning that they may also be claim assistants, contracting personnel, transit benefit managers, or in other technical or administrative series. The remainder of personnel, the “Other” category, are a mix of personnel in a single reporting unit consisting of FOIA Professionals and supplemental personnel who conduct FOIA review as a collateral duty. The overwhelming majority of personnel in the “Other” category are not full-time FOIA Professionals since most of these personnel are within the VHA and VBA field offices rather than in central Administration offices.

Figure 6



- The Centralized FOIA Review Pilot is operating a centralized quality assurance review team to assess cases processed by other Staff Offices before public release. The team has already identified and offered mitigation strategies for inconsistencies in same-type record reviews. The corrections underway will better protect Veterans’ privacy and consistently apply privacy protections. Considering centralized pilots that focus on other aspects of the FOIA process may reveal additional efficiencies as found in this ongoing effort.

Plan Schedule

VA has an ambitious plan to correct the root causes leading to FOIA backlogs and incorporate congressional desire for greater use of technology in efficient application of FOIA processes. There are many opportunities across the enterprise for pilots and proofs of concept. Gathering the necessary details to demonstrate feasibility and potential efficiency gains is key to implementation milestones and will be reported in subsequent report updates.

- SECVA's request for an OGIS assessment was sent to the Director on April 14, 2023. It is expected that compliance assessments will commence no later than FY 2024. VA will cooperate fully with the OGIS assessment process. Once assessments are complete, program offices will map a timeline for corrections and best practice implementation. This information will be addressed in the next report.
- The Centralized FOIA Intake Pilot for the central Staff Offices will continue through the end of this FY and be evaluated for Pilot expansion, conversion to permanent program, or disbanded. Decisions, metrics and additional information will be addressed in the next report.
- The Centralized FOIA Review Pilot for the central Staff Offices will continue through the end of this FY and be evaluated for Pilot expansion, conversion to permanent program, or disbanded. Decisions and additional information will be addressed in the next report.
- Study of other areas for centralization pilots will be assessed for commencement in FY 2024. There are opportunities to examine centralization at the Administration level as well as at the Staff Office level to assist in ongoing professionalization of FOIA services for units that do not have enough FOIA requests to justify having full-time FOIA Professionals. Decisions, efficiency measurements and additional information will be addressed in the next report.
- Ongoing efforts related to VA's e-FOIA system will continue through this FY. Additional requests for information and examination of commercial, off-the-shelf tools are ongoing. Decisions, capabilities and additional information will be addressed in the next report.
- VA IT centralization migration is on track for a 2025 completion for all 600,000 users. Updates will be provided in the next report.
- VA will continue measuring FOIA case production against the 20-day response requirement and provide these key metrics driving towards enterprise backlog reduction in the next report.

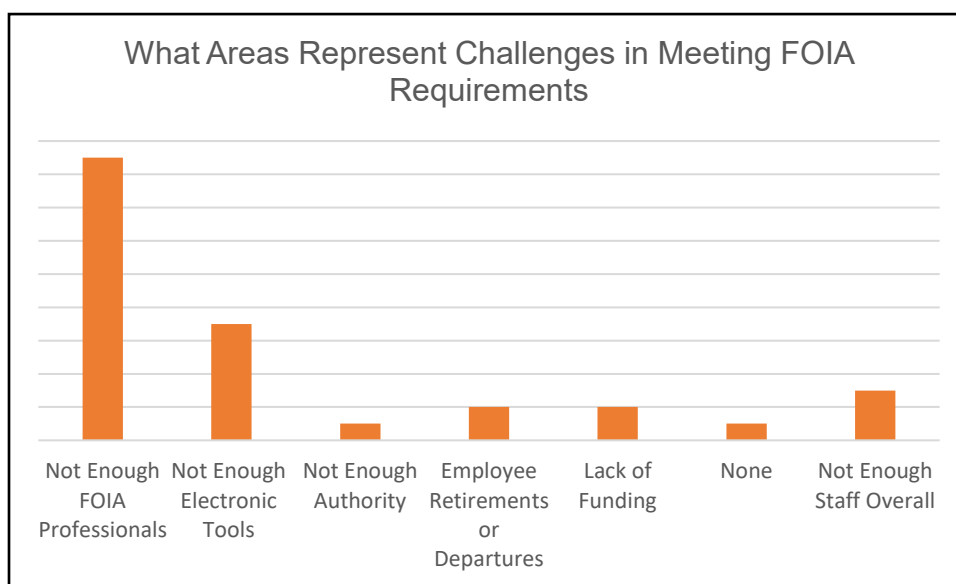
Root Cause Analysis

The SEC 406 WG VA-wide data call provided input for the FOIA backlog analysis. Responses reflect three primary root causes for VA FOIA backlog: staffing, IT and training. Staffing is a perennial concern in specialized fields and FOIA is no exception. The staff type and amount of time devoted to actual FOIA case production represent areas for further study. Likewise, IT tools designed for front-end mission support are not necessarily focused on back-end extraction. Ongoing development and improvement in FOIA case processing tools purpose-built for specialized file types represent a data-rich environment for further study. The third root cause centers around training. All specialized fields require ongoing professional training and continuing education. Regular changes in FOIA case law coupled with staff turnover mean that a broader enterprise approach is necessary to address this need. Each of these three root causes are addressed in more depth below.

FOIA Professional Staffing

- A resounding root cause theme was a clear linkage to FOIA Professional staffing as shown in Figure 7 below. In a decentralized FOIA processing environment, the volume of FOIA requests does not support a full-time FOIA Officer at most VA sites. This results in many sites having a single designated primary FOIA Officer, and perhaps one alternate, both with FOIA as a collateral duty. Forcing FOIA to compete with other assigned collateral duties and priorities, means FOIA processing is frequently placed on hold or delayed. This increases risk of requests aging into a backlog status.

Figure 7



- The opportunity to have dedicated, uninterrupted time to focus on FOIA processing decreases when weighed against other assigned collateral duties. Lack of processing time leaves the collateral duty FOIA Officer at a disadvantage when processing complex, large or voluminous FOIA requests, thus also increasing risk of the request becoming backlogged.
- A site with only one collateral duty FOIA Officer also significantly increases the risk of FOIA backlog upon employee departure. Frequently, collateral duty personnel are professionals in other technical areas who move within their field. If an alternate FOIA Officer is not fully trained to assume the responsibilities, the delay in backfilling the position and the amount of training the new FOIA Officer may require cause requests to age into the backlog. In fact, when considering VA employs nearly 400,000 people at hundreds of VA medical facilities, clinics and benefits offices but only 0.2% of the workforce is comprised of FOIA professionals, it is a considerable feat that the FOIA backlog is not consistently larger.
- In a decentralized FOIA processing environment, the lack of a significant volume of FOIA requests is also linked to a delay in FOIA request processing. A collateral duty FOIA Officer who processes a low volume of requests will not be as proficient as a full-time FOIA Officer who processes a substantial number of FOIA requests in a similar amount of time. The higher the number of FOIA requests processed, the more proficient the individual is in using the e-FOIA system, other redaction software, navigating FOIA processes and making release determinations.
- The plan for addressing this root cause is to move away from decentralization and the designation of FOIA responsibilities as a collateral duty. However, additional analysis is needed to identify the optimal model and number of full-time FOIA Professionals. This might look like centralization within each Administration and centralization of VA Central Staff Offices or some other centralization prototype. Structure modeling for centralization pilots and ways forward require additional time to properly frame and trial.

IT Improvement

- VA, like many other Federal agencies is working on updating and replacing older technology and legacy systems of record. These systems were created in a variety of languages and platforms and contain important information that must be maintained and migrated as technology evolves. As discussed previously, VA is continuing progress on the IT enterprise operating model and will keep Congress and other stakeholders apprised as this work continues.
- When considering the lifecycle of a record, more resources are prioritized at the beginning than the end. For instance, systems are required to track medical care and treatment, prescription delivery and compensation and pension benefit

information. These systems are hyper-focused on mission completion and designed for best supporting the personnel delivering those mission requirements rather than ease of extraction and review for release in response to FOIA requests. File types and extraction methods can create functional challenges on backend processes.

- There are also self-inflicted review delays in situations where entire files, versus the selected responsive records, are provided in a FOIA search. FOIA Professional time is lost to segregating individual records versus processing actual responsive material.
- The plan for addressing this root cause is to continue the additional analysis in identifying IT areas requiring augmented or altered resources. Representative areas are software requirements and appropriate staff to functionally operate both technical implementation and record production from responsive systems. This also includes standardization in methods for requesting records which are raw data and electronic communications. Additionally, this effort requires completion of an inventory of current and foreseeable future file formats and matches to currently available redaction software. VA will purchase additional redaction software as necessary.

Training

- In the current FOIA processing structure, training opportunities are not equitable across all VA components nor is FOIA guidance consistent. In fact, some VA Central Staff Offices indicated that their FOIA personnel do not receive any training while others indicated they received annual training but require more. The need for professional development to retain proficiency and skills in this specialized professional arena is further complicated by ongoing personnel turnover and changes in case law.
- The plan for addressing this root cause is to develop and implement a core FOIA Professional curriculum. While FOIA is both an art and a science, the science element is teachable and testable. Moving towards a workforce of Professional FOIA Officers can build a cadre practiced in the art and capable of effective programmatic execution.
- Additionally, as VA moves to a FOIA workforce competency model, the structure provided in the conceptual development will facilitate a framework for ongoing professional development that supports both new, rotating and long-term staff training needs.

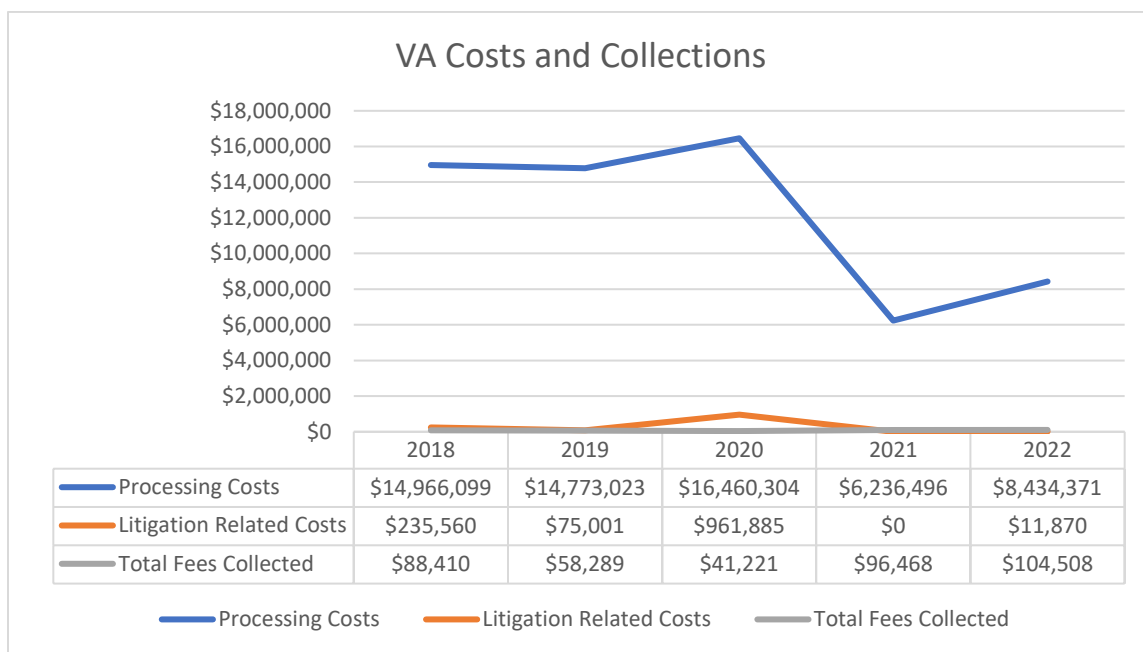
Legislative Recommendations

VA will pursue legislative initiatives related to VA FOIA through routine Departmental processes. In the meantime, VA has two recommendations regarding study. These

recommendations relate to FOIA fees and appropriations, which may result in other legislative action.

- VA recommends that the CRS and the Government Accountability Office be directed to study potential benefits to executive branch departments and agencies retaining FOIA fees instead of sending them to the Treasury. Depending on findings, legislative change may be warranted. FOIA Professionals regularly report training shortfalls for FOIA personnel, and the small amounts of recovered FOIA fees could be retained to significantly improve FOIA training programs across the Government. In fact, it cost VA more to gather the information and produce this report than the total amount of FOIA fees collected by VA in all of 2020. Figure 8 below depicts the FOIA fees collected in VA as compared to the cost of FOIA processing and litigation over the past 5 years.

Figure 8



- VA recommends that CRS study adding a separate line item to the appropriations bill specifically for FOIA programs and activities within the executive branch. Clarity around congressional priorities is most effective with specific appropriations. Considering the issue fully and taking a comprehensive approach across the entire Executive Branch would send a strong message regarding the importance of FOIA to Congress and to the American people. Depending on findings, legislative change in appropriations may be warranted. While VA is committed to effective FOIA compliance, it is but one of many legal requirements competing for appropriations designed to accomplish the Department’s primary mission of Veterans care. As depicted in Figure 9 on the next page, in examining the Governmentwide FOIA website (www.FOIA.gov) and only considering the 15 Executive Branch Departments over the past 5 years, the

- VA's FOIA program is neither the most expensive nor the best staffed:
- Annual costs on average for FOIA activities in the Executive Branch Departments averages between \$28.3 million and \$32.1 million.
 - VA ranks in the top six of the 15 Executive Branch Departments in terms of average number of FOIA cases received.
 - Of the 15 Executive Branch Departments, VA only spent between 21% and 55% of the average processing and litigation costs.
 - VA ranks in the top 4 of the 15 Executive Branch Departments in terms of average number of full-time equivalent employees.

Figure 9

Department	5-Year Average Cases Received	5-Year Average FOIA Employees	5-Year Average Costs
DHS	435,224.80	618.87	\$74,068,786.69
DOJ	93,916.60	514.30	\$95,151,383.48
DOD	54,877.60	1040.45	\$93,538,915.45
HHS	35,849.60	351.98	\$31,671,577.83
USDA	24,768.00	245.51	\$19,197,804.73
VA	23,049.60	449.51	\$12,430,922.03

Conclusion

VA fully supports the FOIA mission and President Johnson's words that, "...the United States is an open society in which the people's right to know is cherished and guarded."⁴ VA recognizes the importance of providing records to the public that shed light on what VA is doing in executing the Department's primary mission of Veteran care and in ongoing Federal business. As a result, VA urges Congress to take positive action supporting all Federal agency capability and capacity to reduce backlogs and fund proactive change in this area of public service.

Department of Veterans Affairs June 2023

⁴ Statement by the President Upon Signing S. 1160, For Immediate Release, Office of the White House Press Secretary, San Antonio, Texas, July 4, 1966. Lyndon Baines Presidential Library, download copy obtained from <https://nsarchive2.gwu.edu/nsa/foia/FOIARelease66.pdf>.

Appendix 1: Key Terms

The definition of key terms for this reported are defined below.

Closed: Refers to FOIA cases that have received a final determination.

Collateral Duty: Responsibilities, or duties that must be completed that are not the primary function or role and cannot take 100% of available work hours.

e-FOIA System: IT solution for FOIA case management and FOIA case processing.

Equivalent Full-time FOIA Employees: Employees who perform FOIA duties fewer than 100% of the work hours available. An "equivalent full-time FOIA employee" is created by adding together the percentages of time dedicated to FOIA duties by employees performing less than fulltime FOIA work. Each time 100% is reached, the time expended is counted as one "equivalent full-time FOIA employee."

Executive Branch Departments: There are 15 main agencies of the Federal Government where the heads are also members of the president's cabinet. These are: U.S. Department of Agriculture (USDA), U.S. Department of Commerce (DOC), DoD, U.S. Department of Education (ED), U.S. Department of Energy (DOE), U.S. Department of Health and Human Services (HHS), U.S. Department of Homeland Security (DHS), U.S. Department of Housing and Urban Development (HUD), DOJ, U.S. Department of Labor (DOL), U.S. Department of State (DOS), U.S. Department of Interior (DOI), U.S. Department of the Treasury (USDT), U.S. Department of Transportation (DOT) and VA.

FOIA Appeal: Closed FOIA case appealed by the requester.

FOIA Litigation: Open or Closed FOIA case or open or closed FOIA appeal case with a suit filed in Federal court for nonresponse or access to withheld information.

FOIA Litigation Costs: The sum of all costs expended by the agency in litigating FOIA requests. Includes salaries of personnel involved in FOIA litigation, litigation overhead, attorney fees and costs and any other FOIA litigation-related expenses.

FOIA Processing: FOIA case accepted by a FOIA processor, placed in a queue and records acquisition or records review is underway.

FOIA Personnel: Refers to personnel engaged in some technical aspect of FOIA, such as case intake, tasking or the review process.

Full-time FOIA Employees: Full-time employees who perform FOIA duties 100% of the time.

Open: Refers to current FOIA cases where a determination has not been made.

Perfected: Request has all the necessary information from the requester to process the request including whether the request adequately describes the records sought and all fees and scope issues have been resolved or discussed with the requester.

Privacy Act Request: Request for records containing information about the requester, such as a Veteran asking for their medical records or claim files.

Received: FOIA case accepted by a FOIA processor.

Appendix 2: Data Tables

Table 1.1 VA FOIA Case Statistics (Source: Government Wide FOIA Site, <https://www.FOIA.gov>)

Year	Backlogged Requests as of End of FY	Pending at FY Start	Received	Processed
2018	4,659	4,368	24,555	22,851
2019	2,631	6,067	21,336	23,749
2020	3,220	4,476	19,053	19,323
2021	2,166	5,781	27,762	30,227
2022	824	4,108	22,542	24,343

Table 1.2 VA FOIA Statistics (Source: Government Wide FOIA Site, <https://www.FOIA.gov>)

Year	Processing Costs	Litigation Related Costs	Total Fees Collected
2018	\$14,966,099	\$235,560	\$88,410
2019	\$14,773,023	\$75,001	\$58,289
2020	\$16,460,304	\$961,885	\$41,221
2021	\$6,236,496	\$0	\$96,468
2022	\$8,434,371	\$11,870	\$104,508

Table 1.3 Executive Branch Department FOIA Costs Statistics (Source: Government Wide FOIA Site, <https://www.FOIA.gov>)

DEPT	2018	2019	2020	2021	2022
USDA	\$ 14,193,956	\$ 18,587,069	\$ 19,711,196	\$ 21,884,096	\$ 21,612,708
ED	\$ 7,749,034	\$ 6,559,776	\$ 8,828,206	\$ 9,748,558	\$ 8,777,930
DOD	\$ 82,945,597	\$ 85,398,514	\$ 95,483,886	\$ 105,262,515	\$ 98,604,065
DOE	\$ 2,225,930	\$ 8,685,716	\$ 8,192,666	\$ 7,991,828	\$ 8,525,998
DOC	\$ 13,247,878	\$ 7,622,224	\$ 7,948,870	\$ 8,494,439	\$ 8,229,072
HHS	\$ 50,732,399	\$ 22,600,204	\$ 25,425,377	\$ 26,081,080	\$ 33,518,829
DHS	\$ 76,685,437	\$ 71,998,597	\$ 70,947,022	\$ 72,901,565	\$ 77,811,312
HUD	\$ 2,146,508	\$ 619,911	\$ 229,743	\$ 100,535	\$ 7,172,099
DOI	\$ 15,213,887	\$ 16,347,932	\$ 21,901,530	\$ 20,384,724	\$ 18,579,672
DOJ	\$ 83,970,186	\$ 93,263,531	\$ 101,072,081	\$ 97,731,044	\$ 99,720,076
DOL	\$ 17,095,632	\$ 18,735,643	\$ 19,103,622	\$ 18,447,895	\$ 18,322,070
DOS	\$ 35,894,113	\$ 27,759,595	\$ 51,278,591	\$ 28,004,909	\$ 39,464,700
DOT	\$ 12,332,040	\$ 13,062,181	\$ 13,810,532	\$ 16,408,291	\$ 15,158,266
USDT	\$ 18,347,713	\$ 19,302,039	\$ 17,376,395	\$ 16,184,207	\$ 17,755,855
VA	\$ 15,201,660	\$ 14,848,024	\$ 17,422,190	\$ 6,236,496	\$ 8,446,241
Average	\$ 29,865,464.71	\$ 28,359,397.04	\$ 31,915,460.48	\$ 30,390,812.10	\$ 32,113,259.52

Table 1.4 Executive Branch Department FOIA Employees (Source: Government Wide FOIA Site, <https://www.FOIA.gov>)

DEPT	2018	2019	2020	2021	2022	Average
USDA	272.11	246.15	257.37	233.85	218.07	245.51
ED	57.96	53.64	63.54	92.35	76.81	68.86
DOD	953.7	1,019.13	1,237.16	964.46	1,027.82	1,040.45
DOE	97.26	74.11	66.2	66.73	72.83	75.43
DOC	120.15	65.44	102.31	86.84	67.44	88.44
HHS	320.13	343.75	374.75	357.55	363.7	351.98
DHS	591.08	607.64	611.45	623.23	660.94	618.87
HUD	78	78	218.75	56.47	85.11	103.27
DOI	142.43	153.19	145.28	152.58	132.65	145.23
DOJ	495.93	478.53	523.32	539.44	534.26	514.30
DOL	126.95	179.05	172.15	165.49	163.34	161.40
DOS	275.6	207.68	205.97	183.2	126	199.69
DOT	101.26	273.98	252.15	105.81	105.41	167.72
USDT	136.8	128.81	140.37	151.41	137.2	138.92
VA	252.31	219.35	290.14	734.75	751.02	449.51
Average	268.11	275.23	310.73	300.94	301.51	291.30

Table 1.5 Executive Branch Department FOIA Requests Received (Source: Government Wide FOIA Site, <https://www.FOIA.gov>)

DEPT	2018	2019	2020	2021	2022	Average
USDA	36,547	26,458	22,810	20,956	17,069	24,768
ED	3,041	2,448	2,384	2,151	2,372	2,479
DOD	57,032	56,524	54,023	52,805	54,004	54,878
DOE	2,073	1,855	1,453	1,492	1,722	1,719
DOC	2,269	2,391	2,017	2,274	1,768	2,144
HHS	35,445	35,358	36,825	33,158	38,462	35,850
DHS	395,751	400,245	397,671	442,650	539,807	435,225
HUD	2,383	2,140	2,038	1,734	1,819	2,023
DOI	8,402	7,973	5,977	6,302	6,407	7,012
DOJ	96,875	95,119	86,729	97,490	93,370	93,917
DOL	14,696	16,090	15,820	13,560	14,491	14,931
DOS	8,448	8,589	9,019	10,683	13,864	10,121
DOT	15,049	16,571	14,632	15,740	19,090	16,216
USDT	12,535	11,936	11,916	10,820	10,594	11,560
VA	24,555	21,336	19,053	27,762	22,542	23,050
Average	47,673	47,002	45,491	49,305	55,825	49,060

Table 2 Excerpted Information from FX (Source: VA Instantiation of FOIA Xpress)

Year	Simple	Complex	Expedited
2018	18,336	3,979	90
2019	18,667	4,633	34
2020	16,082	2,819	29
2021	22,567	7,014	33
2022	18,476	4,417	32

Table 3. VA FOIA Personnel Hours, Litigation/Appeals Information, Personnel Conducting FOIA Reviews, File Storage (Source: Section 406 Working Group Data Call)

3.1 VA FOIA Personnel Hours

Year	Litigation and Appeals Hours	Case Processing Hours
2019	10,769	445,479
2020	19,450	584,041
2021	17,091	1,079,069
2022	18,096	932,464

3.2 Litigation/Appeals Information

Total Entries	In the past four years: Litigation Support	In the past four years: Appeals Support
23	No Time: 12	No Time: 13

3.3 Personnel Conducting FOIA Review

FOIA Reviewer Personnel Status	Number of Responses
FOIA Professionals	10
Staff with FOIA as a Collateral Duty	10
Other	3

3.4 FOIA File Storage

Location	Number of Responses
FX	18
Shared Drive	4
SharePoint	1

3.5 FOIA Challenges

Issue	Responses
Not Enough FOIA Professionals	17
Not Enough Electronic Tools	7
Not Enough Authority	1
Employee Retirements or Departures	2
Lack of Funding	2
None	1
Not Enough Staff Overall	3

Table 4. VA FOIA Centralized FOIA Intake Pilot

Time Frame	Average Weekly FOIA Requests	Average Weekly Privacy Act Requests
Oct-Dec 2022	77	33
Jan-Mar 2023	120	49