



# **Department of Homeland Security Freedom of Information Act Backlog Elimination Projection**

*November 3, 2021*

Fiscal Year 2021 Report to Congress



**Homeland  
Security**

*Privacy Office*

# Message from the Chief Privacy Officer and Chief FOIA Officer

November 3, 2021

I am pleased to present the following report, “Department of Homeland Security Freedom of Information Act Backlog Elimination Projection,” which was prepared by the Department of Homeland Security (DHS) Privacy Office.



This document was compiled pursuant to direction in House Report 116-458 accompanying the Fiscal Year (FY) 2021 DHS Appropriations Act (P.L. 116-260). The report is based on the Privacy Office’s projections regarding the tools and staffing needed to eliminate the DHS Freedom of Information Act (FOIA) backlog in FY 2022 and to keep the backlog at a minimum in the future. As outlined in the Privacy Office’s 2020-2023 Departmental FOIA Backlog Reduction Plan, the office’s goals are to improve its service to the public and the Department, to modernize its operations, to invest in its employees, and to strengthen the FOIA regulatory infrastructure. We appreciate the Committee’s continued interest in and support of the DHS FOIA program and its success.

Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

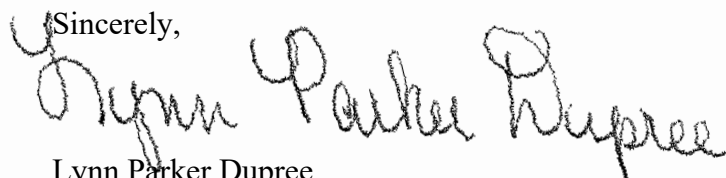
The Honorable Lucille Roybal-Allard  
Chairwoman, House Appropriations Subcommittee on Homeland Security

The Honorable Chuck Fleischmann  
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Chris Murphy  
Chair, Senate Appropriations Subcommittee on Homeland Security

The Honorable Shelley Moore Capito  
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

Inquiries relating to this report may be directed to me at (202) 343-1717.

Sincerely,  


Lynn Parker Dupree  
Chief Privacy Officer and Chief FOIA Officer  
DHS Privacy Office



# Department of Homeland Security Freedom of Information Act Backlog Elimination Projection

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# I. Legislative Language

This report is being provided consistent with direction in House Report 116-458, which accompanies the Fiscal Year (FY) 2021 Department of Homeland Security (DHS) Appropriations Act (P.L. 116-260). House Report 116-458 includes the following direction:

*Freedom of Information Act (FOIA) Backlog Reduction Plan.*—The Committee notes that the November 8, 2019, plan the Department provided to the Committees on April 17, 2020, for eliminating the department-wide backlog of FOIA requests by the end of fiscal year 2022 failed to include any funding estimates, as required by House Report 116-80 [*sic*]. The Secretary shall provide an updated plan within 90 days of the date of enactment of this Act that includes such funding estimates.

House Report 116-458 references House Report 116-180, which accompanies the FY 2020 DHS Appropriations Act (P.L. 116-93) and provides additional detail. House Report 116-180 includes the following direction:

*FOIA Backlog Reduction Plan.*—The Committee directs the Secretary to provide, within 90 days of the date of enactment of this Act, a plan to eliminate the department-wide backlog of Freedom of Information Act (FOIA) requests by the end of fiscal year 2022. The plan shall detail how the Department and each of its components will address challenges contributing to backlogs, such as decentralized operations, inadequate technology, or staffing. Within 120 days of the date of enactment of this Act, the Privacy Office shall brief the Committee on the plan, including the resource requirements for implementing it.

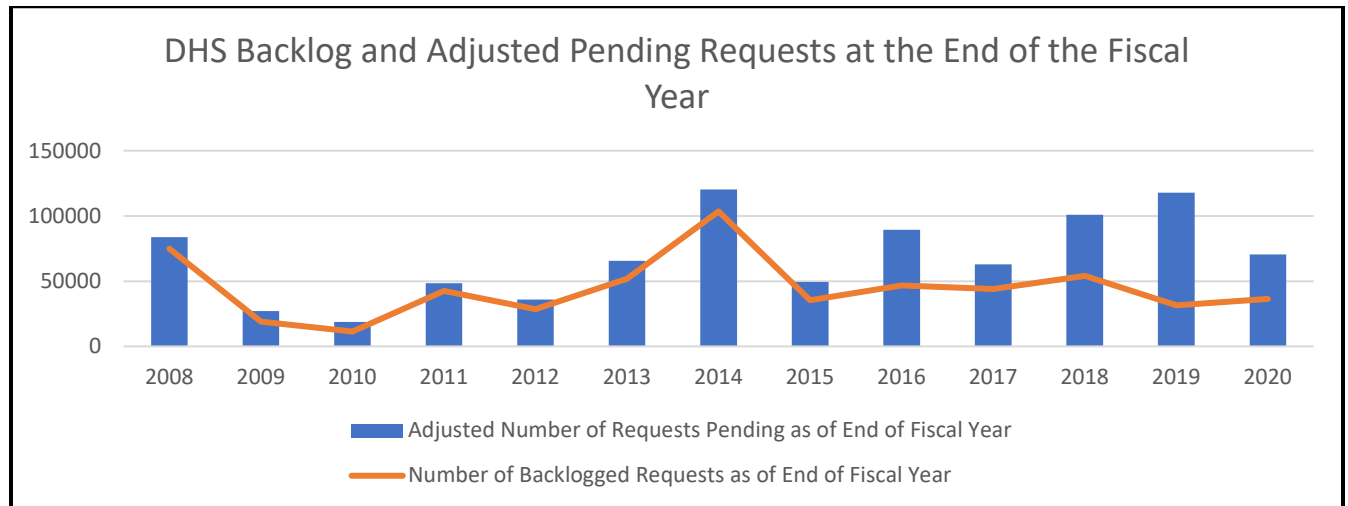
## II. Background

The mission of the DHS Privacy Office is to enable the Department to accomplish its mission while protecting individuals' privacy and facilitating public disclosure. The DHS Chief Privacy Officer is also the Chief FOIA Officer. Accordingly, the Privacy Office is responsible for issuing DHS FOIA regulations and for overseeing Component FOIA performance.

DHS has made tremendous progress in its efforts to control and eliminate the Department's backlog. Since the DHS backlog reached a high of 103,480 requests in 2014, the average backlog at the end of the fiscal year has been fewer than half that number.

In years past, DHS has relied on several strategies to reduce the backlog before the end of the fiscal year, including surging short-term, additional employees to aid career FOIA personnel in processing FOIA requests by leveraging other programs or by bringing in contract support. Although these methods are effective in the short term, Components have not always been able to maintain the backlog reduction consistently. A lack of coordination between Components on the use of these strategies also has made the overall DHS backlog hard to control. For example, end-of-year surges in recent years at U.S. Citizenship and Immigration Services (USCIS) have led to a surplus of referrals at U.S. Immigration and Customs Enforcement (ICE) that cannot be logged in before the end of the fiscal year. Although unlogged requests cannot be included in the backlog or accounted for correctly in the annual report, the Department still must expend resources to handle these requests during the next fiscal year—limiting opportunities to address the backlog.<sup>1</sup>

**Chart 1**



<sup>1</sup> In FY 2018, ICE reported 17,043 unlogged referrals; in FY 2019, ICE reported 59,123 unlogged referrals; and in FY 2020, ICE reported about 25,000 unlogged referrals and the Privacy Office reported about 20,000 requests sent through the physical mail that could not be logged because of pandemic-related safety precautions.

In March 2020, the Privacy Office published the 2020–2023 Departmental FOIA Backlog Reduction Plan. The plan holistically addresses the systemic issues facing DHS FOIA operations and lays out a framework for sustainably reducing the backlog. One key feature of the plan is to modernize the FOIA information technology (IT) infrastructure. DHS has been a pioneer in using technology to improve FOIA performance, but the current FOIA IT infrastructure no longer can handle the volume of requests received annually, the record number of documents produced by the Department, or the sensitivity of the Department’s information. The Privacy Office recently announced the procurement of a contract for a modernized FOIA processing and tracking solution. Critically, the procurement is based on the results of a capabilities analysis report (CAR) that the Privacy Office developed in collaboration with Component FOIA officers. The CAR identified key scalable utilities that the FOIA processing solution needs to serve Component needs most effectively. These utilities include tools that reduce the administrative burden and that take advantage of e-Discovery and other artificial intelligence capabilities to streamline processing.

Another key component of the plan is reducing the backlog and process time of requests not only at Components that process a large volume of requests annually, but also at Components that process relatively few requests each year. More than 94 percent of DHS FOIA requests are submitted to Components that respond primarily to FOIA requests for immigration-related records, and those Components regularly hold the majority of the backlog. Components that receive a smaller volume of requests tend to have a larger percentage of outstanding requests more than 200 days old.

### III. Discussion

The Privacy Office expects the DHS backlog to be about 29,000 requests at the end of FY 2021, a reduction of about 20 percent compared to the end of FY 2020. The reduction is largely due to a court order that required DHS to eliminate the backlog of FOIA requests for individuals seeking their own or a client’s immigration file (i.e., USCIS’s Alien-File (A-file)).<sup>2</sup> USCIS and ICE obtained external resources to assist with processing, including support from the Privacy Office FOIA Division, to satisfy the requirements of that order.

The Privacy Office successfully handled the unlogged requests from FY 2020 and kept up with its regular volume of work, leading to a backlog at the end of FY 2021; the Privacy Office expects its portion of the FY 2021 DHS backlog to be less than 1,000. Maintaining the reduction at the Privacy Office and across the Department will require an investment in the modernized FOIA tracking solution and additional employees to process requests. As discussed below, the additional staff would address Component backlogs and would ensure that the Privacy Office does not encounter another unexpected backlog of requests for immigration-related records. The table below details the estimates to eliminate the DHS backlog and to maintain this reduction past the end of FY 2021.

**Table 1**

<b>Privacy Office’s FOIA Operational Costs - FY 2021–FY 2022</b>				
<b>FOIA Budget Area</b>	<b>FY 2021 Staff</b>	<b>FY 2021 Budget</b>	<b>FY 2022 Staff</b>	<b>FY 2022 Budget</b>
Staff - Office of Biometric Identity Management (OBIM) Records	4	481,179	3	327,571
Staff - Non-OBIM Records	7	1,102,698	10	1,624,506
Staff - FOIA Litigation, Policy, and Oversight	6	792,606	6	853,490
Staff - FOIA Management	4	828,130	4	854,584
<b>Privacy Office Processing, Policy, and Management Subtotal</b>	<b>21</b>	<b>3,204,612</b>	<b>23</b>	<b>3,660,151</b>
Contracts	n/a	1,258,418	n/a	6,350,448
Other: Training, Supplies, etc.	n/a	154,500	n/a	267,000
<b>OVERALL TOTAL</b>	<b>21</b>	<b>4,617,530</b>	<b>23</b>	<b>10,277,599</b>

Note: Numbers may not total correctly because of rounding.

<sup>2</sup> *Nightingale vs. USCIS*, Civil No. 19-cv-03512 (D.D.C., 2018).

## FOIA Processing Solution Technology Improvement

The Privacy Office announced the procurement of a technologically improved FOIA processing solution for the Department and for a majority of DHS Components.<sup>3</sup> The Privacy Office will need to continue to fund and maintain its current system while paying to operationalize the new FOIA solution. Full implementation of the new solution will take time. For a smooth transition, the Privacy Office plans to have the new system in an operable state by February 2022, but continued optimization of all features to maximize efficiencies will continue to occur throughout FY 2022.

## Backlog Reduction Maintenance

The Chief Privacy Officer has authority delegated by the Secretary for overseeing DHS FOIA operations and is the DHS Chief FOIA Officer. The Privacy Office has responsibility for reducing its backlog, monitoring DHS FOIA operations, and recommending changes to processes and funding to the Secretary as necessary to improve performance.

The unanticipated backlog of requests that the Privacy Office experienced during FY 2021 points to the critical need to staff the office appropriately. Because of the regular volume of requests received, even a temporary shortage of staff can lead to a dramatic increase in the DHS backlog.

All but approximately 400 requests in the FOIA Division backlog seek immigration-related information located using a fingerprint scan or other personal information. These immigration-related FOIA requests are routine and consistently take the same amount of time to process. The Privacy Office leveraged its ability to bring on contract support to deal with the backlog in FY 2021, but—as discussed previously—contract support is a short-term strategy.

In light of its responsibilities, the Privacy Office also has taken aggressive action to monitor DHS FOIA performance. The Privacy Office regularly uses its staff to assist with unexpected Component needs. For example, the Privacy Office has closed requests out of the backlog in support of ICE, U.S. Customs and Border Protection, and USCIS and has provided other support, such as assisting the Transportation Security Administration (TSA) with its log-in responsibilities after TSA lost contract support.

The Privacy Office continues to work diligently to right-size its staff and to make good use of the resources that it is given. In FY 2021, the Privacy Office engaged with the DHS Chief Financial Officer's Office of Program Analysis & Evaluation to create a staffing allocation model (SAM). The SAM is the Privacy Office's first comprehensive effort to account for all its workflows, to provide an estimate of its current staffing needs, and to forecast future staffing needs based on additional work requirements placed on the office. The Privacy Office will continue to work with DHS leadership to address its needs and to strengthen the DHS FOIA program.

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<sup>3</sup> DHS Headquarters, ICE, Federal Emergency Management Agency, Transportation Security Administration, U.S. Coast Guard, Cybersecurity and Infrastructure Security Agency, and Federal Protective Service will use this system.



## VI. Conclusion

The Privacy Office expects that the DHS FOIA backlog will be about 29,000 requests at the end of FY 2021. Although the DHS backlog might be larger than that of other agencies, it is smaller in proportion to the number of FOIA requests that DHS receives. In FY 2020, for example, DHS processed about 50 percent of all FOIA requests governmentwide, but accounted for only 25 percent of the overall backlog.

Although the Privacy Office is pleased with the progress made in reducing the Department's FOIA-request backlog over the last few years, work remains to eliminate that backlog. The Privacy Office will continue to work with Components to improve performance. Specifically, the Privacy Office will continue to implement the 2020–2023 Departmental FOIA Backlog Reduction Plan and is committed to finding new ways to provide transparency and to improve customer service.

## Appendix: Abbreviations

<b>Abbreviation</b>	<b>Definition</b>
CAR	Capabilities Analysis Report
DHS	Department of Homeland Security
FOIA	Freedom of Information Act
FY	Fiscal Year
ICE	U.S. Immigration and Customs Enforcement
IT	Information Technology
OBIM	Office of Biometric Identity Management
SAM	Staffing Allocation Model
TSA	Transportation Security Administration
USCIS	U.S. Citizenship and Immigration Services