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Final DHS First-Party FOIA Feasibility Assessment

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Homeland Security Systems Engineering & Development Institute

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This report presents the results of a feasibility assessment of DHS's Freedom of Information Act (FOIA) practices as they relate to first-party requests conducted under 70RDAD23FR0000153/70RDAD23FR0000153: Systems Engineering Support to DHS First Person FOIA Program. The purpose of the task is to assess various proposals for changing the definition or handling of FOIA case categories and moving some request categories out of FOIA processes (e.g., first-party requests, Congressional inquiries) in terms of impacts to organizational structure; agency-level, department-level, and shared processing capacity; resourcing; and performance.

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Abstract

This DHS First-Party FOIA Feasibility Assessment examines strategies for changing the definition or handling of FOIA case categories and moving first-party requests out of FOIA. This effort includes evaluating strategies for responding to first-party FOIA requests by articulating the characteristics of first-party requests and the types of records that are good candidates for moving out of FOIA processes. HSSEDI examined first-party FOIA practices and instances of responding to first-party requests through alternative means of access across government and within DHS. The report includes recommendations to improve the processing of first-party requests within DHS through FOIA or alternative means of access.

Key Words

1. Freedom of Information Act
2. First-Party Requests
3. Alternative Means of Access
4. Privacy Act
5. Privacy Engineering

Record of Changes

No.	Date	Reference	A=Add M=Modify D=Delete	Description of Change
0.1	18 Dec 2023		A	Initial Draft for Internal Review
0.2	27 Dec 2023		M	Delivered as Interim Report
1.0	25 Apr 2024		M	Delivered as Final Report

Executive Summary

All executive branch federal agencies are required to comply with the Freedom of Information Act (FOIA). The law mandates agencies make information available to the public proactively or on request, with exceptions for classified information, deliberative records, personal information, law enforcement information, and other exemptions. FOIA is a significant compliance obligation for the federal government, with federal agencies receiving just under 1,200,000 FOIA requests in Fiscal Year (FY) 2023.

The Department of Homeland Security (DHS) shoulders a significant portion of the FOIA burden, receiving over half of all FOIA requests every year since FY2020, including over 56% of all FOIA requests in FY2023 with almost 675,000 requests. Most of these DHS FOIA requests are handled by four components: DHS Privacy Office (DHS PRIV), U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE). In FY2023, these four FOIA processing centers received close to 99% of all DHS FOIA requests. Driving this request volume in these four processing centers are first-party FOIA requests, where people are making requests for records about themselves through FOIA. Over 90% of these components' requests are first-party requests, most of which involve Alien Files (A-Files) and other immigration records, entry and exit records, apprehension and other law enforcement records, and biometric records.

Grappling with first-party FOIA requests is an important concern for DHS. In 2023 the Homeland Security Advisory Council recommended to the Secretary that DHS establish an alternative system for handling first-party requests outside of FOIA. The Council stated that DHS should engage internal or external experts to make recommendations for designing, funding, and implementing such a system. Other entities, including the FOIA Advisory Committee, have made similar recommendations to DHS.

It is in this context that the DHS Privacy Office engaged The MITRE Corporation, as the not-for-profit operator of the Homeland Security Systems Engineering and Development Institute (HSSEDI), to conduct an independent assessment of strategies for changing the definition or handling of FOIA case categories and moving first-party requests out of FOIA. This assessment evaluates strategies for responding to first-party FOIA requests at DHS by articulating the characteristics of first-party requests and the types of records that are good candidates for moving out of FOIA. HSSEDI examined first-party FOIA practices and instances of responding to first-party requests through alternative means of access across government and within DHS, focusing on DHS PRIV, USCIS, CBP, ICE, and the Federal Emergency Management Agency, which is included in this analysis because it provides an additional example of a DHS component moving some first-party requests out of FOIA.

Core findings of this assessment are:

- **Finding One: *FOIA alternatives are not inherently better than FOIA for handling first-party requests.*** The characteristics of requests and responsive records determine the best approach to managing these requests. In some circumstances, FOIA remains the most effective process for responding to first-party requests. In other circumstances, handling first-party requests through an alternative means is the wisest choice. General

characteristics of requests and responsive records that can suggest the best course of action include:

- It is likely that the best course of action is to leave first-party requests in FOIA when:
 - The responsive records to first-party requests contain complex and unstructured content with exemptions, including significant equities or third-party Personally Identifiable Information (PII).
 - The set of responsive records to first-party requests is voluminous—the larger the set of responsive records, the more likely it is that the records will require careful review.
 - The responsive records to first-party requests are managed in distributed locations and/or are difficult to find.
- It may be advantageous to investigate the opportunity to move first-party requests out of FOIA when:
 - A distinct population is making first-party requests for a narrow set of records.
 - Requesters are looking for a narrow piece of information that can be separated from the responsive records and the sought information does not have equities, third-party PII, or other exempt content.
 - Requesters are seeking not just records but also help in navigating a process or are looking to complete a transaction.
- **Finding Two: *There are three common FOIA-alternative solutions implemented by agencies across government.***
 - Handling first-party requests through Privacy Act programs
 - Enabling requesters to directly engage program offices or service centers
 - Enabling requesters to access their records through online portals
- **Finding Three: *A singular first-party alternative system for DHS first-party requests is not viable.***

Identifying the most effective solutions for responding to first-party requests is situationally dependent on the nature of the requests and the responsive records. A single FOIA alternative system, even limited to immigration and travel records, would have to handle a broad range of complex records and types of first-party requests and would not necessarily be more effective than current FOIA processes or a mix of FOIA and FOIA-alternative solutions.

- **Finding Four: *First-party requests are primarily a privacy and systems design challenge rather than a FOIA challenge.***

Because people have a privacy right to access government records containing information about themselves, managing first-party requests can be understood as a privacy and a systems design challenge. Privacy challenges can be seen through prism of privacy legal requirements, privacy principles, privacy workflow design concepts, and privacy engineering for systems that process PII. By embedding an analysis of first-party request

demand volume and needs into systems design lifecycle processes, agencies can implement purposefully designed request capabilities in the information systems and/or FOIA, Privacy Act, or other processes that enable them to effectively respond to requests.

- **Finding Five:** *Managing first-party requests is just as important as managing traditional third-party FOIA requests for building the public's trust in government.*

Building greater trust with the American people through enhanced openness and transparency was one of the Secretary of Homeland Security's 2023 Priorities. FOIA obviously plays a critical role in enabling the public to understand the government's practices, actions, and decisions and this transparency is crucial for fostering public trust in the government. However, transparency is only half of the trust equation. Government agencies must also consistently provide reliable and equitable services to earn that trust.

Based on these core findings and detailed findings delineated in the report, HSSEDI makes the following recommendations:

- **Recommendation One:** DHS PRIV and DHS components should incorporate first-party request analysis into DHS's systems design processes.
- **Recommendation Two:** DHS components should identify narrowly defined opportunities to create request-ready first-party records and create or improve alternative means of access.
- **Recommendation Three:** DHS Headquarters and all DHS components, particularly USCIS, ICE, and CBP, should invest in their FOIA programs at levels needed to process the current and growing demand for first-party and traditional third-party FOIA requests.
- **Recommendation Four:** DHS PRIV and all components should closely monitor technological advances to identify specific opportunities to improve FOIA processes for managing first-party requests.
- **Recommendation Five:** DHS PRIV and all components should identify narrowly defined opportunities to improve the processing of specific types of first-party requests within FOIA.
- **Recommendation Six:** DHS PRIV and DHS components should refine the categorization of specific types of first-party requests and the counting of full-time and full-time equivalent FOIA employees when that improved data collection will better inform decision making on strategies for handling first-party requests.

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1 Introduction

1.1 Background

All executive branch federal agencies are required to comply with the Freedom of Information Act (FOIA), 5 United States Code (U.S.C.) § 552. FOIA mandates agencies make information available to the public proactively or on request, with exceptions for classified information, deliberative records, personal information, law enforcement information, and other exemptions. [1] FOIA is a significant compliance obligation for the federal government. In Fiscal Year (FY) 2023, federal agencies received just under 1,200,000 FOIA requests—the most since FY2008, when the Department of Justice (DOJ) began tracking FOIA requests separately from Privacy Act requests. [2] [3] Agencies processed over 1,122,000 requests and had a collective backlog of just over 208,000 requests by the close of FY2023.¹

The Department of Homeland Security (DHS) shoulders a significant portion of the federal government's FOIA request volume. DHS has received over half of the FOIA requests sent to all federal agencies every year since FY2020. In FY2023 DHS received almost 675,000 FOIA requests, representing over 56% of all requests received by the federal government. The Department processed almost 580,500 cases in FY2023 and carried a request backlog of almost 64,000 FOIA cases by the close of that fiscal year. See Figures 1 through 7 in Section 3.1.2 for additional data on these trends.

Most of these DHS FOIA requests are handled by four components: DHS Privacy Office (DHS PRIV), U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE). In FY2023, these four components received close to 99% of all FOIA requests sent to DHS. Driving this request volume in these four components are first-party FOIA requests, where people are making requests for records about themselves through the FOIA process. Approximately 90% to 98% of these components' requests are first-party requests.

Most of these first-party requests involve Alien Files (A-Files) and other immigration records, entry and exit records, apprehension and other law enforcement records, and biometric records. Other commonly requested first-party records at DHS include disaster relief records, investigative records, background check records, and human resources records. These records range from simple forms to complex files containing hundreds of pages with equities in multiple agencies. Fulfilling requests for these records normally involves manual review for exempt information that must be withheld.

The significant volume of first-party requests and the challenge of servicing these requests while also responding to “traditional” third-party FOIA requests in a timely and accurate fashion has gained considerable attention in the FOIA community. Scholars and the FOIA Advisory Committee have highlighted the challenges of first-party FOIA requests and have encouraged agencies to find alternatives outside of FOIA to provide first-party requesters with the

¹ Unless otherwise noted, all FOIA data is from <https://www.foia.gov/>.

information they seek. Enabling FOIA programs to focus their resources on responding to third-party requests that are frequently pursued for transparency and accountability goals, which FOIA was originally intended to support, is a central motivation for making these recommendations.

Grappling with first-party FOIA requests is a significant concern within DHS. The Homeland Security Advisory Council issued an openness and transparency review in March 2023 with recommendations to the Secretary. This includes a recommendation for DHS to “establish an alternative system for making and responding to first-party requests in a more timely way than through FOIA.” To that end the Council recommended that DHS “should engage an appropriate expert (internal component or contractor) to assess DHS’s first-party requests and make recommendations for the design and implementation of an alternative system, the funding, technology, and alternatives for handling first-party requests.” [4, p. 19]

It is in this context that the DHS Office of Privacy engaged The MITRE Corporation, as the not-for-profit operator of the Homeland Security Systems Engineering and Development Institute (HSSEDI), to conduct an independent assessment of strategies for changing the definition or handling of FOIA case categories and moving first-party requests out of FOIA. This assessment evaluates the current landscape across the federal government and within DHS of first-party FOIA requests and alternative methods for responding to these requests. It identifies the circumstances in which there are opportunities to improve the management of FOIA requests, through either FOIA or other means. This assessment is supplemented by a first-party FOIA-alternative evaluation framework that can be used to identify types of records that are good candidates to move out of FOIA processes.

1.2 Scope

This assessment evaluates strategies for responding to first-party FOIA requests at DHS by articulating the characteristics of first-party requests and the types of records that are good candidates for moving out of FOIA processes. This includes identifying constraints to making these changes. The assessment examines several types of DHS first-party records to make an initial evaluation of the feasibility of shifting the first-party responses for at least some of these record types or to identify process improvement opportunities short of moving these requests out of FOIA. These are not definitive assessments as they do not include formal analysis of alternatives between current FOIA processes and possible FOIA-alternative processes. Each assessment, however, illustrates different challenges and opportunities in managing first-party requests.

This feasibility assessment is supported by a first-party FOIA-alternative evaluation framework that articulates a methodological approach for evaluating different approaches for managing first-party requests for different types of records.

Third-party FOIA requests are considered only to the extent to which they impact FOIA programs’ capacity and workload. Analysis and proposed changes to processes supporting third-party FOIA requests are out of scope for this assessment.

1.3 Assumptions

This assessment is informed by several assumptions.

- This assessment assumes that first-party requests sent to DHS, whether through FOIA or other processes, will continue at similar volume and rate of growth that DHS has seen since FY2021. This assessment also assumes that records responsive to first-party requests will generally maintain the same level of complexity that DHS has seen since FY2021.
- This assessment assumes that third-party FOIA requests sent to DHS will continue at a similar volume and rate of growth that DHS has seen since FY2021. This assessment also assumes that records responsive to third-party requests will generally maintain the same level of complexity that DHS has seen since FY2021.
- This assessment assumes that most DHS components will continue to use SecureRelease as their core FOIA management and processing tool and USCIS will continue to use its FOIA Immigration Records System (FIRST) as its core FOIA tool for at least the next several years.
- While recognizing that the state of technology is continuously evolving and there are rapid advances in artificial intelligence and machine learning, this assessment does not assume any specific technological advancements or breakthroughs.
- This assessment articulates findings and recommendations that do not depend on any changes to FOIA or the Privacy Act. This assessment assumes no significant changes to either law. It assumes no changes to other laws or new directives from the Office of Management and Budget (OMB) or DOJ that would directly affect the processing of first-party requests.

1.4 Core Findings

Each section of the assessment (Section 3) starts with a set of detailed findings. Core findings drawn from the entire assessment are as follows.

Finding One: *FOIA alternatives are not inherently better than FOIA for handling first-party requests.*

The characteristics of requests and responsive records determine the best approach to managing these requests. In some circumstances, FOIA remains the most effective process for responding to first-party requests. In other circumstances, handling first-party requests through alternative means is the wisest choice. While identifying the best approach to managing first-party requests is context-specific, there are general characteristics of requests and responsive records that can suggest a FOIA or FOIA-alternative process as the best course of action.

- When the responsive records to first-party requests contain complex and unstructured content with significant equities or third-party Personally Identifiable Information (PII):
 - The more exempt information requiring careful review that responsive records contain, the more likely it is that keeping these requests within FOIA is the best course of action. This is particularly true for records containing exempt information that relates to third parties or is law enforcement sensitive that is not easily segmented from the rest of the responsive records. FOIA programs usually have the strongest capabilities within an agency to navigate and appropriately apply these exemptions themselves or

coordinate the necessary expertise to make these determinations. An agency looking to improve its response to first-party requests in these situations will likely find its best opportunities in changing how the records are created and managed to make exempt information more easily segregated, rather than changing the vehicle through which the requests are managed.

- When the set of responsive records to first-party requests is voluminous:
 - The larger the set of responsive records to a first-party request, the more likely it is that the records will require careful review that FOIA programs are typically best situated to conduct.
- When the responsive records to first-party requests are managed in distributed locations and/or are difficult to find:
 - FOIA programs are typically the best equipped agency office to coordinate the search and discovery of responsive records that may be in multiple information management systems managed by different agency offices and programs. Moving such first-party requests out of FOIA does not address these kinds of challenges. As noted above, focusing on changing how the records are created and managed rather than the request process is likely the best course of action for agencies in this situation.
- When a distinct population is making first-party requests for a narrow set of records:
 - When requesters are a specific population asking for a single record type that does not require extensive exemption review and is managed by a single office or program, it may be advantageous for an agency to move this kind of first-party request out of FOIA. An example of this kind of request is current or former agency employees requesting their personnel records. If a FOIA program is serving only as a pass-through between the requester and recordkeeping office and is not adding value to the request process, an agency should investigate the option of requesters working directly with the office managing the records.
- When requesters are looking for a narrow piece of information, or the set of responsive records is small and does not have extensive equities or third-party PII:
 - When requesters are seeking specific pieces of information that can be easily extracted from responsive records, such as exporting particular fields of well-managed data from structured responsive records, or are requesting records that do not contain equities or third-party PII, agencies may have the opportunity to take these requests out of FOIA. When responsive records are managed and structured in a manner that does not require manual review for each request, agencies may be able to service these requests via online portals and take advantage of the automation affordances these systems provide.
- When requesters are not just seeking records but are also seeking help in navigating a process or looking to complete a transaction:
 - FOIA programs' expertise is focused on agency records and the access rights people have to those records. Other programs have the agency's expertise on programs, services, and processes. When requesters are seeking not just records, but also help in navigating a government process or want to carry out a transaction, it may be

beneficial for agencies to enable requesters to directly interact with the agency programs that manage the processes the requesters are trying to navigate.

Because many first-party records will continue to need to be managed through FOIA programs, these programs will continue to require the resources needed to meet the demands of the requests for these records.

Table 1. Characteristics Suggesting FOIA or FOIA-Alternative Strategies

Characteristic	Leave in FOIA	Investigate Alternatives
Nature of Responsive Records	Complex, unstructured, and varied	Well-structured and repetitive
Volume of Responsive Records	Large	Small
Exempt Information Within Responsive Records	Includes complex exempt information that is not easily segmented and/or contains multiple equities	Includes no exempt information or contains easily identified and removable exempt information
Management and Storage of Responsive Records	Distributed across multiple systems and/or offices; difficult to search	Managed in a single location; easy to search
Nature of Requester Population	Large population making requests for a complex set of records	Distinct population making requests for a narrow set of records
Nature of Information Sought by Requesters	Requesters looking for a broad set of information, usually seeking the full set of responsive records	Requesters looking for specific pieces of information, usually not seeking the full set of responsive records
Program Services Sought by Requesters	Requesters seeking only records	Requesters looking for assistance navigating a service or wanting to conduct transactions beyond just seeking records

Finding Two: *FOIA-alternative solutions are generally either Privacy Act programs, direct engagement with program offices or service centers, or online portals.*

The most reported FOIA-alternative solutions are:

- Agencies that manage first-party requests through Privacy Act programs without relying on FOIA processes.
- Agencies that enable requesters to directly contact program offices that manage the responsive records and bypass the FOIA process. This includes enabling requesters to initially contact agency customer service centers or call centers.

- Online portals that enable requesters, after authenticating themselves, to request and receive the records they are seeking online, usually without manual human intervention.

Finding Three: *A singular first-party alternative system for DHS first-party requests is not viable.*

As noted in Finding One, identifying the most effective solutions for responding to first-party requests is situationally dependent on the nature of the requests and the responsive records. Having a single FOIA-alternative system at DHS is an attractive idea. However, even such a system limited to immigration and travel records would be handling a broad range of complex records and types of first-party requests. Such a system would face steep implementation challenges and would not necessarily be more effective than current FOIA processes or a mix of FOIA and FOIA-alternative solutions.

Finding Four: *First-party requests are primarily a privacy and systems design challenge rather than a FOIA challenge.*

Managing first-party requests can be understood as a privacy and a systems design challenge. Privacy risks involved in first-party requests include the risk that a government agency is not able to completely fulfill individuals' requests for information about themselves and the risk that, in providing first-party records to a requester, agencies inappropriately release PII about another person.

By embedding an analysis of first-party request demand volume and needs into systems design lifecycle processes, agencies can implement purposefully designed request capabilities in the information systems and/or FOIA, Privacy Act, or other processes that enable them to effectively respond to requests. This involves folding this request analysis into privacy analysis that is part of systems engineering processes and systems development and acquisition processes. In the best scenarios, agencies can implement information systems that can manage request-ready first-party records composed of well-structured documents and data with, when necessary, consistently structured exempt information. These request-ready records could enable the automated or semi-automated withholding of exempt information or facilitate exporting pieces of releasable information that meet requesters' needs in a targeted fashion. This minimizes the need for manual document review and in some cases could enable requesters to access the records they seek directly online.

Retrofitting this capability on legacy systems would be a steep challenge. The best opportunity to implement this capability is to incorporate it into the requirements development, acquisition, and implementation phases of new systems.

Depending on agency FOIA programs to handle first-party requests without addressing request demands throughout the entire systems engineering lifecycle of new information systems that handle PII is a reactive approach that does not embed the privacy needs of requesters into these systems. Effective response to first-party requests is determined by the creation and management of responsive records as much as the effectiveness of FOIA processes.

Finding Five: *Managing first-party requests is just as important as managing traditional third-party FOIA requests for building the public's trust in government.*

Building greater trust with the American people through enhanced openness and transparency was one of the Secretary of Homeland Security's 2023 Priorities. FOIA is a key element of this

effort. FOIA obviously plays a critical role in enabling the public to understand the government's practices, actions, and decisions and this transparency is crucial for fostering public trust in the government. However, transparency is only half of the trust equation. Government agencies must also provide reliable and equitable services to earn that trust. Transparent but ineffective agencies are not trustworthy. In addition, the public expects privacy to be appropriately protected by government agencies when handling their PII. Although effectively and equitably responding to first-party requests through FOIA or other means provides a private benefit to the requester, it also contributes to the common good of building public trust just as much as responding to traditional FOIA requests that facilitate government transparency.

1.5 Recommendations

Based on these core findings and detailed findings delineated in the report, HSSEDI makes the following recommendations to DHS regarding its management of first-party requests through FOIA and alternative means of access. Recommendations One and Two focus on alternative means of access and systems outside of FOIA. Recommendations Three through Six focus on FOIA programs.

- **Recommendation One:** *DHS PRIV and DHS components should incorporate first-party request analysis into DHS's systems design processes.*

DHS PRIV and DHS components should continue their work to incorporate first-party request analysis in the design, implementation, and review of information systems managing PII. This work is crucial for implementing purposefully designed request capabilities (located within the information system containing the PII, FOIA or Privacy Act processes, or other requester-facing services) that will enable DHS Headquarters (HQ), offices, and components to respond to requests in a timely, accurate, safe, and equitable manner. This involves monitoring for processes and services moving to fully digital systems and identifying where these new and updated systems can incorporate capabilities to generate request-ready first-party records that can be conveyed to requesters with minimal need for manual review. These efforts also include identifying technological advances, such as artificial intelligence, that open new possibilities for creating request-ready records. This work supports DHS PRIV's goal to "embed privacy safeguards in the Department's policies, programs, activities, and architecture." [5, p. 2]

- **Recommendation Two:** *DHS components should identify narrowly defined opportunities to create request-ready first-party records and create or improve alternative means of access.*

The best opportunities to improve DHS's processing of first-party requests are through changes to specific processes and to the design, creation, and management of specific types of first-party records and information management systems. Examples of opportunities include:

- Privacy and FOIA programs at DHS PRIV, CBP, and ICE should work with strategic partners within DHS to identify individual information management systems managing encounter records that provide opportunities to export releasable

information from well-structured, request-ready first-party records that meets requesters' specific needs and can be disclosed with minimal manual review.

- DHS component FOIA programs should work with human resources (HR) offices to identify first-party requests for personnel-related records that do not require extensive exemption review and therefore could be handled directly by those HR offices.
- The Federal Emergency Management Agency's (FEMA) FOIA program should continue to work with Office of Response and Recovery assistance programs to develop ways to steer requesters to access records directly from www.disasterassistance.gov.

- **Recommendation Three:** *DHS HQ and all DHS components, particularly USCIS, ICE, and CBP, should invest in their FOIA programs at levels needed to process the current and growing demand for first-party and traditional third-party FOIA requests.*

FOIA processing centers are likely to be responding to first-party requests for the foreseeable future. Many types of first-party requests will continue to be best managed by DHS's FOIA programs. These programs will need to be properly resourced to meet the demand of these first-party requests as well as traditional third-party FOIA requests.

- **Recommendation Four:** *DHS PRIV and all components should closely monitor technological advances to identify specific opportunities to improve FOIA processes for managing first-party requests.*

FOIA programs at DHS PRIV and all components should look for opportunities to leverage technological advances to improve the effectiveness of their FOIA processes and should evaluate the costs and benefits of new technologies, including the cost to implement and the cost savings and value provided over time once the technologies are in place. Events such as the NextGen FOIA Technology Showcase are good venues for keeping abreast of the state of technical solution offerings for FOIA and records disclosure programs. [6] DHS PRIV and the components should continue to communicate with the developers of SecureRelease (and FIRST developers at USCIS) about incorporating emergent technologies to improve the discovery and review of responsive records. Tools such as MITRE's FOIA Assistant tool demonstrate where advances in artificial intelligence can be used to support reviewers' searches for exempt content within responsive records. [7] DHS FOIA processing centers should expand their implementation of techniques such as robotic process automation that create narrow process improvements with big impacts.

- **Recommendation Five:** *DHS PRIV and DHS components should identify narrowly defined opportunities to improve the processing of specific types of first-party requests within FOIA.*

Improvements to processing first-party requests are going to come through changes in handling requests for specific types of first-party records. Targeting specific improvements in FOIA processing workflows for even small enhancements can have significant impacts on processing throughput because of the large volume of requests involved. Analysis of individual improvement opportunities might be supported by resources such as the First-Party FOIA Alternative Framework (see Appendix F) or the FOIA Reference Model. [8] This includes, for example, DHS PRIV investigating opportunities to incorporate the digital submission of fingerprints as part of the FOIA request process for Automated Biometric

Identification System (IDENT) records. The most significant challenge to responding to first-party requests for IDENT records lies between intaking the requests and discovering the responsive records or discovering that no responsive records exist. Improvements to the process of requesters submitting their fingerprints and searching IDENT against those submitted fingerprints is the key to shortening the respond time for these FOIA requests.

- **Recommendation Six:** *DHS PRIV and DHS components should refine the categorization of specific types of first-party requests and the counting of full-time and full-time equivalent FOIA employees when that improved data collection will better inform decision making on strategies for handling first-party requests.*

DOJ does not require agencies to report on first-party FOIA requests as a distinct category. When components evaluate the costs or benefits of a new strategy for managing a particular type of first-party request, it may be beneficial to internally count those requests as distinct categories to generate sufficiently detailed data to inform decision making regarding the value of a specific first-party request strategy.

There is some variation within DHS on how full-time and full-time equivalent FOIA employees are counted in annually reported and internally tracked data. In particular, the cost of labor expended by staff outside of FOIA programs on records search and capture for first-party FOIA requests is not always counted in Equivalent Full-Time FOIA Employees data. When FOIA programs are trying to overcome challenges in searching for responsive records for first-party requests, gathering data that gives a truer reflection of the effort expended on search and capture can help a FOIA program advocate for the resources needed to implement process improvements.

2 Assessment Approach

2.1 Methods

The methodical approach to this assessment took the following steps.

- Refined assessment scope and focus.
 - Worked with the sponsor to iteratively refine the scope and focus of this assessment. This assessment centered on analyzing the nature of first-party FOIA requests and FOIA-alternative solutions across government and developing a criteria framework for determining the best opportunities for moving certain first-party requests out of FOIA. This iterative refinement with the sponsor included identifying DHS components for closer evaluation of their management of first-party FOIA requests and identifying peer agencies outside of DHS that have implemented first-party FOIA-alternative systems that could provide insights on strategies for handling first-party requests.
- Analyzed the current state of first-party FOIA and FOIA-alternative requests across government and within DHS.
 - Conducted a mixed methods review of the first-party FOIA practices and challenges in the federal government.

- Gathered and reviewed the literature on first-party requests. This literature included academic literature; agency regulations, policies, and strategies; and DHS Office of Inspector General (DHS OIG); U.S. Government Accountability Office (GAO); Department of Justice, Office of Information Policy (OIP); and National Archives and Records Administration (NARA), Office of Government Information Services (OGIS) guidance, recommendations, studies, and findings.
- Reviewed and analyzed annual FOIA data.
- Conducted semi-structured interviews of OIP and OGIS staff.
- Conducted a structured policy analysis.
 - Reviewed the rights afforded to first-party requesters by FOIA and the Privacy Act.
- Conducted a review of FOIA data collection.
 - Reviewed the types of data collected about first-party FOIA requests.
- Conducted an examination of the role privacy risk assessment and privacy engineering play in managing first-party requests.
 - Reviewed the structure and role of DHS Privacy Impact Assessments (PIAs).
 - Examined the potential role of privacy principles, privacy by design principles, and privacy engineering in supporting sustainable approaches to managing first-party requests.
- Conducted an analysis of FOIA-alternative systems identified in Chief FOIA Officer (CFO) annual reports.
 - Compared FOIA-alternative systems identified in 2021, 2022, 2023, and 2024 CFO annual reports.
 - Generated data on first-party FOIA requests and alternative means of access through open and closed coding of responses to questions in the CFO annual reports.
 - Analyzed OGIS assessment of responses in the 2021 CFO annual reports to questions about first-party requests.
- Conducted an analysis of selected peer agencies with first-party FOIA-alternative systems.
 - Reviewed CFO annual report entries about FOIA-alternative systems.
 - Reviewed websites, guidance, and other documentation about FOIA-alternative systems.
- Conducted a mixed methods review of the first-party FOIA practices and challenges within DHS.
 - Gathered and reviewed DHS and component-level regulations, policies, strategies, and studies.
 - Reviewed and analyzed annual component FOIA data.

- Conducted semi-structured interviews with DHS PRIV staff.
- Conducted an analysis of selected DHS components managing significant volumes of first-party FOIA requests.
 - Reviewed component policies, strategies, studies, data, and other related documents.
 - Conducted semi-structured interviews with component FOIA staff. See Appendix D for an outline of interview questions.
 - Analyzed System of Record Notices (SORNs) and PIAs of systems that manage frequently requested first-party records.

2.2 Limits

As noted in the scope (Section 1.2), the fundamental limit of this assessment is that it does not provide a formal analysis of FOIA and FOIA-alternative systems for responding to first-party requests. The analysis needed to design or identify a FOIA-alternative solution that can be formally compared against a FOIA process is beyond the scoping of this project. Other limits of this assessment include:

- HSSEDI did not directly engage members of the requester community for this analysis. Continuous engagement with requester communities should be an important element of DHS's effort to effectively respond to first-party requests. However, this requester engagement was out of scope for this assessment. HSSEDI managed this limitation by triangulating requester needs and experiences by reviewing the first-party FOIA literature from scholars and advocates, examining court cases, exploring processes where users engage with DHS FOIA programs, and drawing on the experience of MITRE's evaluation of other FOIA programs.
- HSSEDI did not use SecureRelease or FIRST, and thus did not gain an in-depth working knowledge of these FOIA tracking and processing tools.
- HSSEDI did not access the various DHS systems that manage first-party records, and thus did not have an in-depth working knowledge of these systems.
- Although HSSEDI examined public-facing DHS FOIA websites, it did not submit FOIA requests and walk through a full FOIA process as a requester.
- Available FOIA data did not always delineate between first-party and third-party requests or between types of requested first-party records with full precision.
- Available FOIA data did not always delineate the staffing spent on first-party and third-party requests with full precision.
- Not all 2024 CFO annual reports were available for review by the time this assessment report was drafted.

3 First-Party FOIA and FOIA-Alternatives Analysis

This analysis contains:

- An overview of the current first-party FOIA landscape, highlighting emergent themes in the discourse about the challenges these requests bring.
- An analysis of the FOIA and Privacy Act laws, DHS regulations, and DHS policies that impact first-party requests.
- An analysis of the FOIA data that is typically captured to measure first-party FOIA requests, responses, and expended resources, as well as limits to those measures.
- A review of the role privacy engineering could play in maximizing agencies' effectiveness in responding to first-party requests.
- An examination of self-reported FOIA-alternative processes identified in CFO annual reports.
- An analysis of first-party FOIA-alternative strategies at selected peer agencies.
- An analysis of selected first-party FOIA and FOIA-alternative solutions for selected record types at DHS PRIV, USCIS, CBP, ICE, and FEMA.

3.1 Overview

Core Findings

- 3.1.1** There are a significant number of first-party requests submitted to agencies, especially DHS. These requests challenge FOIA programs' capacity to respond to traditional third-party requests in an effective and timely manner.
- 3.1.2** First-party FOIA requests are not part of the original intent of FOIA. However, effectively responding to first-party requests through FOIA or other means is important for fostering trust in government and equitably meeting the needs of the public.
- 3.1.3** The U.S. Attorney General, the FOIA Advisory Council, and others have called for agencies to at least investigate opportunities for moving first-party requests out of FOIA. Most important for DHS, in 2023 the Homeland Security Advisory Council recommended that DHS should establish an alternative system for handling first-party requests.
- 3.1.4** In some circumstances FOIA is not the best process for responding to first-party requests. FOIA does, however, afford requesters a wide set of rights, and in some situations FOIA is the best vehicle for responding to first-party requests.
- 3.1.5** Effectively responding to first-party and traditional third-party FOIA requests is a central piece of DHS's strategic goal of building trust with the American people through enhanced openness and transparency and stronger service delivery.
- 3.1.6** While A-Files are involved in the majority of DHS first-party FOIA requests and garner most of the attention about first-party FOIA requests, first-party FOIA

request challenges at DHS include an array of record types. Different types of records suggest different first-party request solutions.

3.1.1 Emergent Themes on First-Party FOIA Across the Federal Government

The challenge of handling the large volume of first-party requests has gained attention among FOIA advocates, scholars, and government officials as it became clear in the 2010s that these types of requests constituted a significant portion of FOIA requests, especially for agencies that have law enforcement or benefits missions, such as DHS, DOJ, the Department of State, and the Department of Veterans Affairs (VA). This discourse on first-party FOIA requests and potential solutions to this challenge cluster around four claims: (1) First-party FOIA requests overload FOIA programs and crowd out traditional FOIA requests, (2) first-party requests do not fit under the original intent of FOIA, (3) FOIA does not serve first-party requesters well, and (4) agencies should move first-party requests out of FOIA. HSSEDI briefly comments on the merits of each claim.

1. First-party FOIA requests overload FOIA programs and crowd out traditional FOIA requests.

People and organizations have raised concerns that first-party and commercial FOIA requests overwhelm agencies and crowd out third-party requests that seek to shed light on agency decisions, policies, and actions. Margaret Kwoka, a law professor at Ohio State University, has documented the preponderance of commercial and first-party requests to FOIA and their role in stressing agencies' FOIA processing capacity and causing delays in responding to traditional third-party requests. [9] [10] [11] [12] Her scholarship along with the work of others within and outside of government has focused attention on the challenge of handling first-party FOIA requests. Within DHS, for example, the Homeland Security Advisory Council noted in its 2023 openness and transparency report that the "heavy volume of these [first-party] requests clogs the FOIA pipeline and severely strains DHS's ability to respond." [4, p. 18] HSSEDI concurs that the large volume of first-party FOIA requests clearly affects the ability of some agencies to respond to FOIA requests.

Concerns about first-party FOIA requests exist in the context of long-standing concerns over agencies' capacity to respond to FOIA requests fairly, accurately, and in a timely manner. These concerns stretch back to the establishment of the law, when agencies expressed concerns during the initial drafting of FOIA legislation in the 1960s over the administrative challenges the law would pose. [13] As the number of requests grew over the course of the 2010s, GAO has conducted numerous assessments of agencies' ability to meet their FOIA demands [14] [15] [16] [17] [18] and Congress held several hearings about these challenges.²

2. First-party requests do not fit under the original intent of FOIA.

² Within the past ten years the U.S. Senate Committee on the Judiciary has held notable hearings on FOIA in 2015, [82] 2016, [83] and 2022 [84] and the U.S. House Committee on Oversight and Accountability held a FOIA hearing in 2015. [81]

A claim commonly made in this first-party FOIA discourse is that the growing volume of first-party and commercial interest FOIA requests, while perfectly legal, are not advancing the original intent of FOIA to enable an informed public, which is essential for holding government accountable in a liberal democracy.³ [10, p. 2204] The Homeland Security Advisory Council claimed, for example, that “FOIA was not designed for first-person requests.” [4, p. 18] The historical evidence is clear that first-party requests were not part of the original intent of FOIA. The creation of the law was driven by journalists and news organizations with the intent of requiring federal agencies to release records in the interest of government accountability and openness. [19, pp. 28-63] FOIA programs deliver their unique value to agencies when they are asked to respond to traditional third-party requests. No other agency programs are designed to take in often very complex requests for any type of agency record, determine where within the entire agency these responsive records are located, and adjudicate the applicability of nine exemptions and three exclusions to those records, accounting for a range of internal and external equities. On the other hand, in some cases first-party requests, especially repetitive requests for specific record types in support of a specific need, can be handled by agency program offices just as well—if not better—than by FOIA programs.

First-party and commercial requesters are making FOIA requests to seek records for a private right or benefit rather than increasing the public’s awareness of government actions. Because FOIA fees typically represent less than 1% of FOIA processing costs, these FOIA requests become a private benefit realized at a public cost. Some consider this privatized gain/socialized cost dynamic in the case of commercial requesters antithetical to the public-spirited intent of FOIA. [20, pp. 16-17] [12, pp. 1414-1422] There is generally a more sympathetic view of first-party requests because people are often seeking records that are critical to their safety, livelihood, or freedom. While granting that these FOIA requests can be crucial for individuals, the requests are framed as having a limited benefit to the public. [9, p. 3] For example, Mark Fenster, a law professor at the University of Florida, notes that while first-party FOIA requests may provide a “utilitarian purpose,” these “requests are not directly related to the classic normative ends of democratic accountability and popular sovereignty that transparency advocates claim as the laws’ main justification; nor do they necessarily contribute to some larger public good.” [21, p. 68]

Agencies should not, however, underestimate the public good that comes from individuals receiving equitable, accurate, and timely services from the government, regardless of the legal vehicle used for that service. A person who has a negative experience trying to obtain records about themselves from an agency is not likely to have a high level of trust in that agency. Effective service delivery, including responses to first-party FOIA requests, is vital to fostering trust in government among the public—trust that is essential for our liberal democracy. [22] An agency that operates transparently but ineffectively will not earn the public’s trust. Trust depends on transparency *and effectiveness*. Indeed, effectively managing first-party requests, whether through FOIA or other means, falls within the broad-based federal effort to improve customer experience and service delivery for the

³ People frequently quote the follow line from the majority opinion in the 1978 Supreme Court case *National Labor Relations Board v. Robbins Tire & Rubber Company* when making this claim about the intent of the FOIA: “The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” [92]

public.⁴ These improvements are essential in strengthening trust in government. Ensuring that people making first-party requests—whether through FOIA or other means—have positive, timely, and equitable experiences fits within the government’s policy priority to improve service delivery and customer experience.⁵ [23]

3. FOIA does not serve first-party requesters well.

In addition to this mismatch between first-party FOIA requests and the intent of the law, some people and organizations claim that the law does not serve these first-party requests well. For example, the Homeland Security Advisory Council asserted that FOIA is a “poor fit” for first-person requests. [4, p. 18] During its 2018-2020 term, the FOIA Advisory Committee, composed of members from inside and outside government and chaired by the Director of OGIS, made the same claim. It pointed out that FOIA’s administrative deadlines do not necessarily meet requesters’ needs, particularly those who are seeking records for pressing legal or medical reasons. The Committee also noted that requesters sometimes need to file multiple FOIA requests with more than one agency for information that should be retrievable in one request. [24, p. 27]

It is certainly true that in some circumstances there are better options than FOIA for providing first-party requesters with the information they seek. However, FOIA provides requesters with a strong set of rights to acquire records from the federal government. In many circumstances an agency’s FOIA program has the best infrastructure to provide first-party requesters with appropriate access to certain types of records. These circumstances are discussed further in Sections 1.4, 3.5, 3.6, and 3.7.

4. Agencies should move first-party requests out of FOIA.

The Attorney General, OIP, the FOIA Advisory Committee, advocates, and scholars have encouraged agencies to investigate, identify, and implement alternative means outside of FOIA to respond to first-party requests.

In March 2022, the U.S. Attorney General sent a memo to the heads of all executive departments and agencies issuing FOIA guidelines, encouraging agencies to remove barriers to accessing government records and reduce their FOIA backlogs. The Attorney General encouraged all agencies “to examine whether they have ... categories of records that they could make more readily accessible without requiring individuals to file FOIA requests.” [25]

The FOIA Advisory Committee made one recommendation during its 2018-2020 term and four recommendations during its 2020-2022 term about providing alternatives means of access to commonly requested first-party records. This includes Recommendation 2022-14, which calls for initiating “comprehensive assessment of ... [DHS] processes, workforce

⁴ Customer experience is one of the President’s three management agenda priorities. [87]

⁵ An example of legislation and guidance that directs agencies to improve customer service that directly affects first-party requests is the Creating Advanced Streamlined Electronic Services for Constituents Act of 2019 (“CASES Act”). The CASES Act and supporting OMB guidance requires agencies to accept digital “identity-proofing” means to enable individuals to request access to their records more easily. [86]

and technology ... as it relates to A-Files responsive to FOIA requests.” [26] See Appendix A for a list of these recommendations.

In response to Recommendation 2020-14 for OGIS and OIP to “help agencies explore and consider alternative, more efficient ways for requesters to access records about themselves,” OIP inserted the following question in the 2021 CFO Report for agencies receiving more than 50 FOIA requests a year: “Does your agency frequently receive common categories of first-party requests? If so, please describe the types of requests and if your agency has explored establishing alternative means of access to these records outside of the FOIA process.” OIP has continued to ask variations of this question in the 2022, 2023, and 2024 CFO annual reports. OIP has summarized and highlighted responses in its summaries and assessments of the CFO annual reports. OGIS produced an Issue Assessment study of commonly requested categories of first-party records examining 2021 CFO reports. [27] Responses to this question in the 2021, 2022, 2023, and 2024 CFO annual reports are analyzed in Section 3.5.

The Homeland Security Advisory Council made a similar call on DHS to move first-party requests out of FOIA, calling on DHS to “establish an alternative system for making and responding to first-person requests in a more timely way than through FOIA for, at a minimum, records that affect an individual’s eligibility for benefits or adversely affect an individual in proceedings.” [4, p. 18] The Council recommended that DHS engage an “appropriate expert” to “make recommendations for the design and implementation of an alternative system” and seek funding from Congress and devote internal resources to implement such a system. [4, p. 19] (See Appendix B for further details on these recommendations.)

Additionally, there have been calls in the FOIA literature for agencies to move first-party requests out of FOIA and into alternative processes. [28, p. 21] Margaret Kwoka has played a prominent role from outside of government in advocating for these changes, publishing widely on the issue. [9] [10] [11] This advocacy has included providing congressional testimony. [29]

While it may be advisable to move first-party requests out of FOIA for some types of requests, as many people urge, this is not the case for all first-party requests. The advisability of moving first-party requests out of FOIA depends on the circumstances of the records being sought, what requesters are trying to accomplish, and the constraints and capacity of the agency. These circumstances are discussed further in Sections 1.4, 3.5, 3.6, and 3.7.

3.1.2 Strategic Importance and Trends of First-Party FOIA Requests Within DHS

As the department receiving the most FOIA requests overall and the most first-party FOIA requests across the government, DHS has a strong interest in finding effective solutions for first-party and third-party FOIA requests. Information disclosure, including FOIA, has garnered high visibility at DHS, with the Secretary of Homeland Security’s 2023 Priorities including building greater trust with the American people through enhanced openness and transparency. [30] The Secretary highlighted the Department’s response to nearly 500,000 FOIA requests in 2022 as one of the accomplishments that strengthen its “capacity to deliver for the American people.” [31] Despite the importance placed on FOIA and transparency more generally, FOIA is usually not a

legislated budget line item, and it must compete with other priorities within DHS's operational budget.

The DHS Privacy Office, which is responsible for managing FOIA requests for most offices in the Office of the Secretary and many supporting components and for overseeing FOIA programs across the Department, has as one of its strategic goals to “operate an innovative, customer-centric, government information disclosure program that provides timely information to the public and stakeholders.” [5, p. 2] DHS PRIV aims in this goal to “provide timely information to the public and stakeholders” through a broadly understood disclosure program, which includes FOIA and other methods of appropriately disclosing information. [5, p. 2] Identifying and implementing effective processes to responsibly release first-party records through FOIA or other processes is, of course, central to achieving this goal.

First-party requests are a significant part of the continuing concerns about FOIA backlogs at DHS. These concerns stretch back to the Department's founding in 2003 when it inherited backlogs from the agencies it absorbed at its creation. [32, p. 6] Several GAO engagements during the 2010s and early 2020s reviewed activities and strategies to reduce DHS's backlog. [17] [15] [14] [33] The DHS OIG also weighed in on DHS's FOIA backlog in a 2020 report. [34] In 2020, DHS PRIV addressed concerns about the Department's FOIA backlog in a 2020-2023 backlog reduction plan. The plan contains five goals focused on improving service to the public, improving service to the Department, improving FOIA information technology (IT) infrastructure, improving FOIA workforce engagement, and strengthening the FOIA policy and oversight framework. [32]

At the forefront of the concern about first-party FOIA requests have been A-Files, which are the most requested record type in first-party DHS FOIA requests. A growing backlog of FOIA requests for A-Files during the 2010s became a significant point of contention between DHS and the immigration advocacy community, culminating in the federal district court case *Nightingale v. USCIS*. This case resulted in a December 2020 summary judgment for the plaintiffs, obligating USCIS and ICE to adhere to statutory deadlines for responding to A-File FOIA requests, eliminate their A-File FOIA backlog, and submit quarterly compliance reports to the court. [35] A summary of the case is in Appendix C. USCIS and ICE's efforts to comply with these orders are further discussed in Section 3.7.3 and Appendix E.2.

While A-Files are the focus of many discussions about first-party FOIA requests at DHS, the Department's first-party FOIA request challenge includes an array of record types, as is demonstrated in this assessment's review of selected DHS first-party FOIA processes in Section 3.7. Different types of first-party records suggest different solutions for effectively and appropriately managing first-party requests. Taking care to distinguish the types of records under discussion will enrich and advance the discourse about first-party FOIA requests.

As noted in Section 1.1, DHS received close to 675,000 FOIA requests in FY2023. Over the past ten years, DHS has seen an increase in the number of requests it receives and its portion of all FOIA requests submitted to federal agencies. The Department's share of all FOIA requests has grown from almost 41% in FY2014 to over 56% in FY2023.

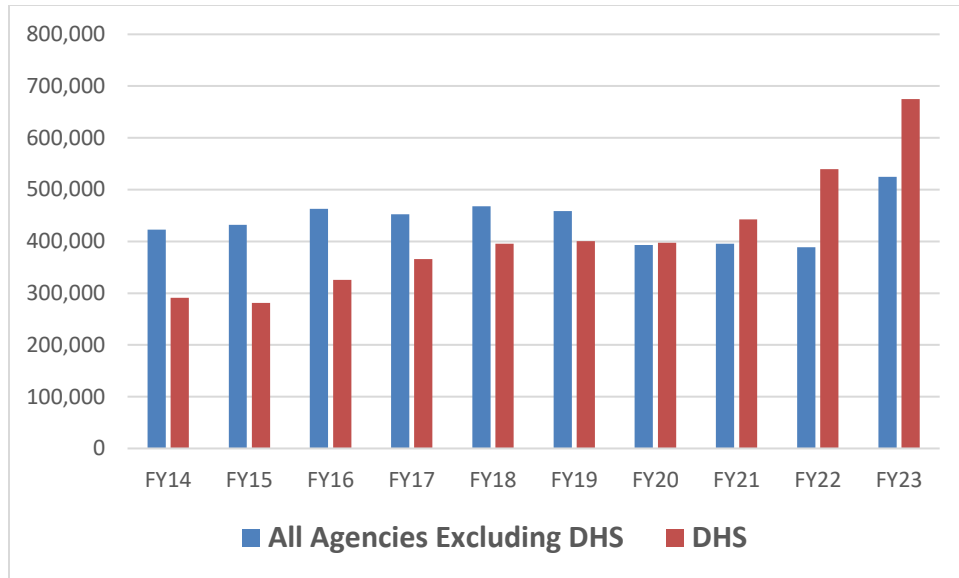


Figure 1. FOIA Requests Received by DHS and by All Other Agencies

As also noted in the Introduction, DHS PRIV, USCIS, CBP, and ICE receive most of DHS's FOIA requests. Well over 90% of requests received by these four FOIA processing centers are first-party requests. Effectively managing these kinds of requests is central to addressing DHS's FOIA challenges.

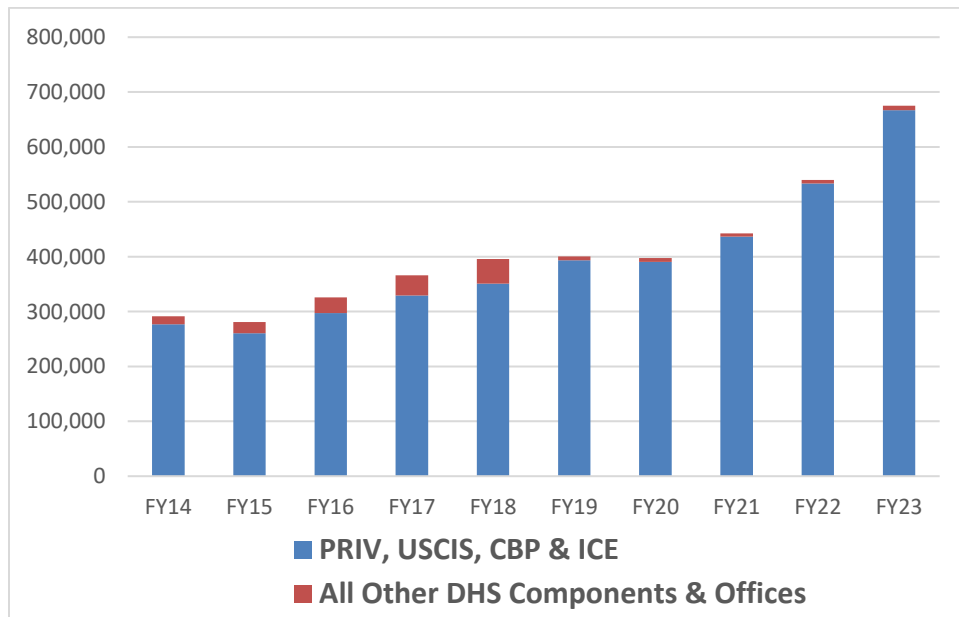


Figure 2. FOIA Requests Received by DHS PRIV, USCIS, CBP, and ICE and All Other DHS Components and Offices

Each year since FY2020, DHS has processed over 50% of requests processed by all agencies. Its share of all processed requests across the federal government has risen from close to 37% in FY2014 to just under 52% in FY2023.

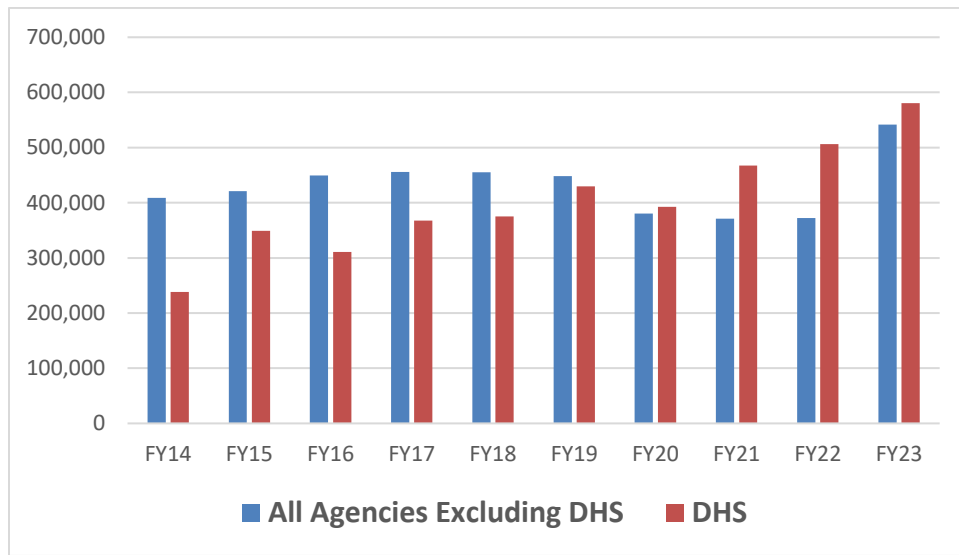


Figure 3. FOIA Requests Processed by DHS and by All Other Agencies

High-profile concerns have been raised about FOIA backlogs within DHS and across the federal government. These backlogs are a genuine concern; they can cause serious consequences for individual requesters.

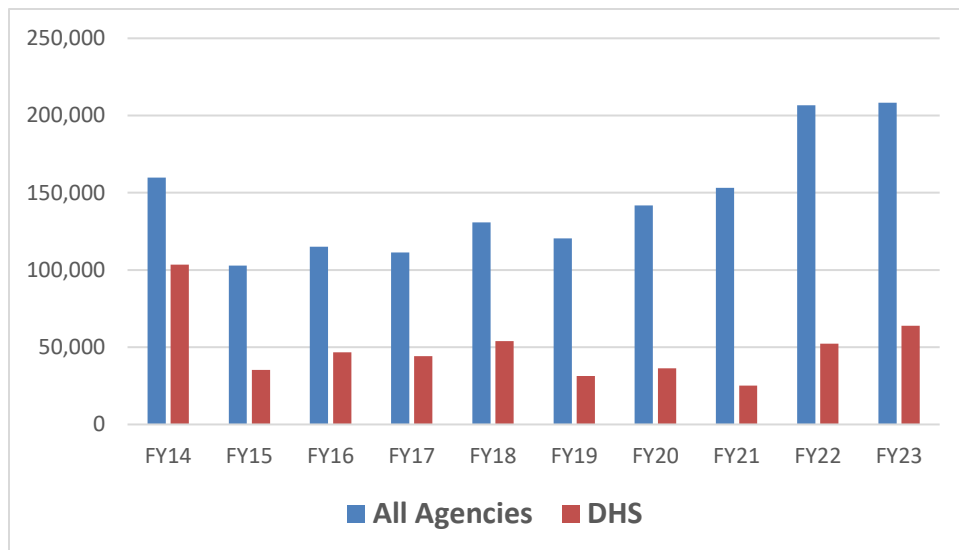


Figure 4. Backlogged FOIA Requests at the End of the Fiscal Year at DHS and All Agencies

While the raw numbers of backlogged requests are substantial, these data are best understood in the context of the growing FOIA demand. Since FY2015, DHS's backlog as a percentage of received requests has been lower than in the rest of the federal government. DHS kept this rate between 12% and 15% for FY2015 through FY2018 and has held it between 6% and 10% since FY2019.

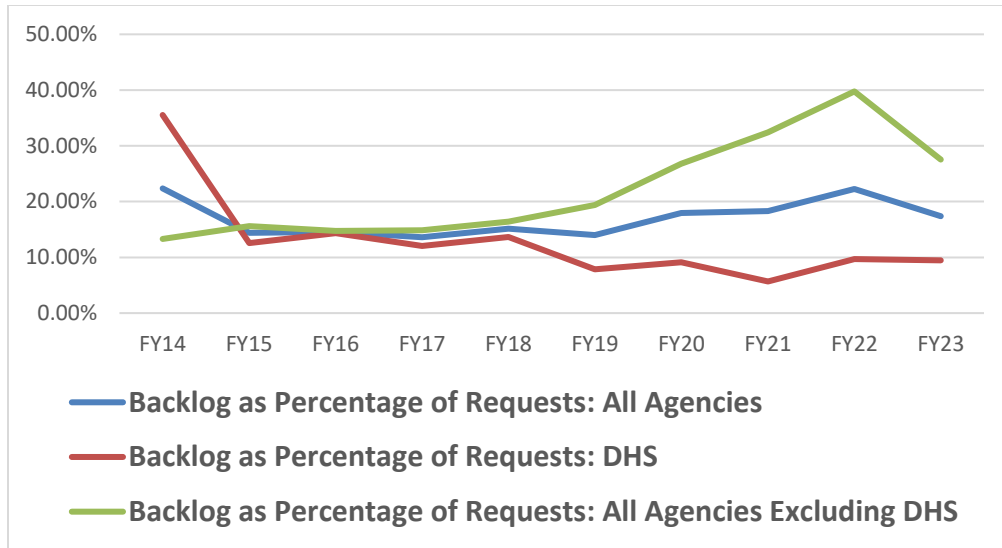


Figure 5. Backlogged FOIA Requests at the End of the Fiscal Year at DHS and All Agencies

DHS continues to invest personnel resources into its FOIA programs to meet its request challenges. Its total number of full-time FOIA staff has risen from 529 staff equivalent in FY2016 to 639 staff equivalent in FY2023. Over the past ten years, DHS has held between 12% and 14.5% of the federal FOIA workforce.⁶

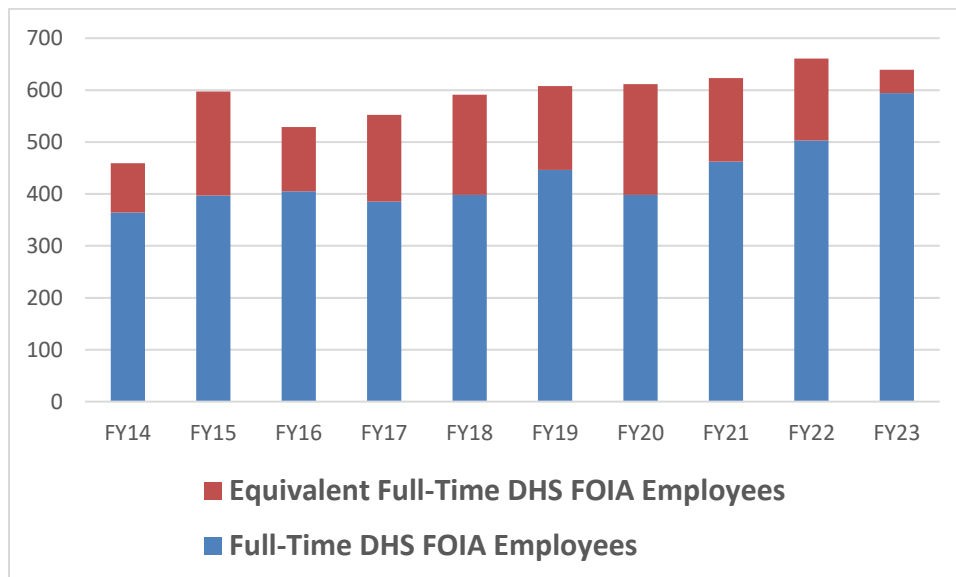


Figure 6. DHS FOIA Full-Time FOIA Staff

DHS has been able to increase its throughput rate, processing 518 requests per full-time FOIA staff (full-time employees plus full-time equivalent employees) in FY2014 and 908 requests per full-time FOIA staff in FY2023. This is a very rough metric that should be used with caution. It does not account for variation in the complexity of requests and changes in request

⁶ These data are from the Full-Time FOIA Staff category in the FOIA annual report. Full-Time FOIA Staff are the Full-Time FOIA Employees plus the Equivalent Full-Time FOIA Employees. See footnote 9. For a discussion about the completeness of FOIA personnel data, see Section 3.3.

characteristics, nor it does account for administrative appeals and FOIA litigation. Also see Section 3.3 for limitations on FOIA personnel data. With those caveats in mind, this metric does provide preliminary evidence that DHS has implemented effective improvements to its FOIA processes.

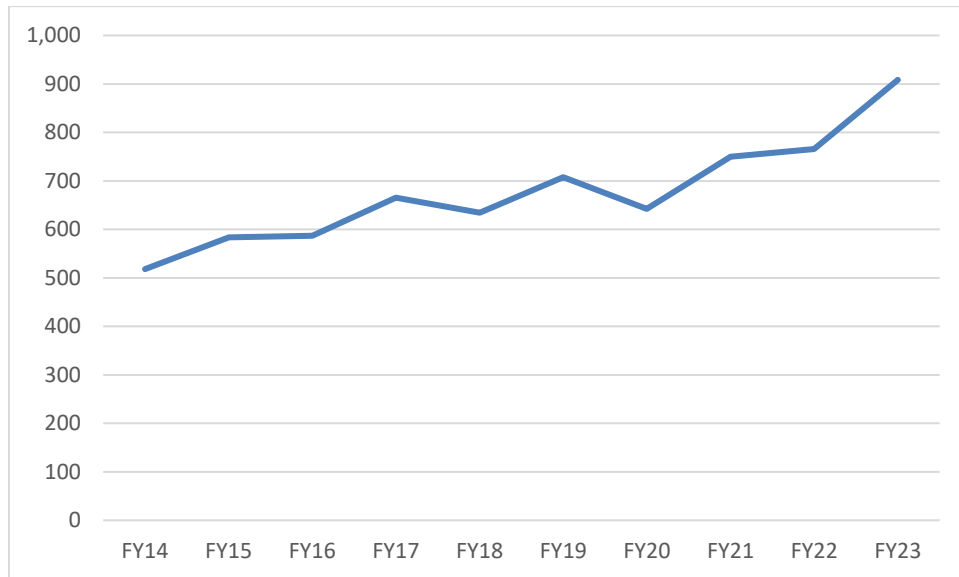


Figure 7. DHS FOIA Requests Processed per Full-Time FOIA Staff

3.2 Statutes, Regulations, and Policies

Core Findings

- 3.2.1** As noted in its regulations and policies, DHS provides people making first-party requests a union set of Privacy Act and FOIA rights to obtain records about themselves. DHS withholds records responsive to a first-party requester only when both Privacy Act *and* FOIA exemptions apply.
- 3.2.2** DHS’s union set of rights approach to first-party requests is mandated by the Privacy Act (5 U.S.C. § 552a(t)).
- 3.2.3** DHS is obligated to rigorously enforce the withholding of information when Privacy Act and FOIA exemptions still apply to protect the rights and safety of other individuals.
- 3.2.4** Enforcing exemptions in first-party requests is a complicated and high-stakes task that requires specialized knowledge, as illustrated by the requirements of DHS Instruction 262-11-004 “Withholding of Personnel’s Personally Identifiable Information from Disclosure” and DHS FOIA Instruction 002-02-002 “Non-Disclosure of Information Protected under 8 U.S.C. Section 1367.”

First-party FOIA requests are most directly governed by FOIA and the Privacy Act. OIP’s guidance, “The Interface Between the FOIA and Privacy Act,” provides detailed analysis of the intersection of these two laws and what rights and obligations both laws collectively present to

requesters and agencies. [36] This review summarizes that analysis, describing who the two laws provide rights to, the nature of those rights, and what government information they cover. This assessment also examines the DHS regulations and policies that govern the Department’s response to first-party requests.

Table 2. FOIA and Privacy Act Comparison

Topic	FOIA	Privacy Act
Purpose	Increase access to government information for the public.	Foster trust between agencies and individuals by requiring that agencies’ use of collected data regarding individuals be restricted to stated purposes and what is permitted by the Privacy Act.
Who Can Make Requests	Essentially anyone, including U.S. citizens, lawful permanent residents, non-U.S. citizens, and organizations. <i>5 U.S.C. § 552(a)(3)</i> Some restrictions on requests from foreign government entities or representatives of those entities. <i>5 U.S.C. § 552(a)(3)(E)</i>	Individuals who are U.S. citizens and lawful permanent residents. <i>5 U.S.C. § 552a(a)(2)</i> Additionally, some Privacy Act protections regarding law enforcement records are extended to individuals from certain covered countries designated by the U.S. Attorney General. <i>The Judicial Redress Act of 2015, 5 U.S.C. § 552a, Notes</i> Under current policy, “DHS extends the Privacy Act’s access, amendment, and accounting for disclosure privileges to all individuals, regardless of immigration or citizenship status.” <i>DHS Instruction 262-16-001 “DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Personally Identifiable Information”</i>
Records Definition	Any records maintained by an agency in any format or maintained by an entity under government contract, for the purposes of records management. <i>5 U.S.C. § 552(f)(2)</i> Any record that is either obtained or created by an agency, and under agency control when a FOIA request is received. <i>DOJ v. Tax Analysts, 492 U.S. 136, 144-45 (1989)</i>	Records maintained by an agency that contain information about an individual with an identifier tied to the individual. <i>5 U.S.C. § 552a(a)(4)</i> These records are stored in a system of records that are a group of records under the control of an agency from which information is retrieved by name or identifiers of individuals. <i>5 U.S.C. § 552a(a)(5)</i>

Topic	FOIA	Privacy Act
Right to Access Records	Right to any agency record on request, notwithstanding applicable exemptions and exclusions. <i>5 U.S.C. § 552(a)(3)</i> <i>5 U.S.C. § 552(b)</i> <i>5 U.S.C. § 552(c)</i>	Right to an individual requester's records or information pertaining to the requester maintained in a system of record on request by that individual. <i>5 U.S.C. § 552a(d)(1)</i>
Right to Request Change to Records	None.	Right to request an amendment of a record pertaining to the requester. <i>5 U.S.C. § 552a(d)(2)</i>
Deadlines	20 business days to determine response to a FOIA request and notify requester of determination. <i>5 U.S.C. § 552(a)(6)(A)(i)</i> 30 business days to determine response to FOIA request in unusual circumstances. <i>5 U.S.C. § 552(a)(4)(A)(viii)</i>	Agencies must establish in their rules a reasonable time identifying records pertaining to a requester. <i>5 U.S.C. § 552a(f)(2)</i> DHS has established 20 business days to determine response to a Privacy Act request, with exceptions for unusual circumstances as defined in FOIA. <i>6 Code of Federal Regulations (CFR) § 5.23(c)</i> 10 business days to acknowledge receipt of request to amend a record and promptly correct record or inform individual of refusal to amend the record. <i>5 U.S.C. § 552a(d)(2)</i>

DHS regulations and policies provide additional rules on how first-party requests must be handled within the Department. DHS regulations articulating how the Department complies with FOIA are published at 6 CFR Subpart A (§ 5.1 – 5.13), and its regulations on the Privacy Act are published at 6 CFR Subpart B (§ 5.20 – 5.36). The key provision articulating DHS's approach to first-party FOIA requests is contained in 6 CFR § 5.10 "FOIA requests for information contained in a Privacy Act system of records." Under this regulation, DHS processes requests under FOIA and the Privacy Act received from requesters for information about themselves that is stored in a Privacy Act system of record. In these cases, information will be withheld only when *both* a Privacy Act *and* a FOIA exemption apply.

DHS outlines its responsibilities and policies for complying with its FOIA obligations in DHS Directive 262-11-00 "Freedom of Information Act Compliance." The Department's policy on complying with FOIA is "to implement the FOIA uniformly and consistently and to provide maximum allowable disclosure of agency records upon request by any individual." [37, p. 5] Per DHS regulation and policy, the Department affords first-party requesters a union set of rights provided by FOIA and the Privacy Act, where requesters have all the rights to records about

themselves enumerated by either law, and makes its best effort to responsively fulfill first-party requests. This approach follows the requirements of the Privacy Act and FOIA. As OIP notes, the Privacy Act, at 5 U.S.C. § 552a(t), prevents agencies from relying on FOIA exemptions to withhold records from requesting individuals that are otherwise available under the Privacy Act or from relying on Privacy Act exemptions to withhold records that are otherwise available under FOIA.⁷ [36]

However, DHS is obligated to rigorously enforce the withholding of information when Privacy Act and FOIA exemptions remain applicable to protect the rights and safety of other individuals that are a party to requested records as well as safeguard certain national security and law enforcement information. Consistently and fairly applying these exemptions is a complex task that requires a deep knowledge of FOIA and the Privacy Act, DHS regulations and policies, and DHS recordkeeping systems, along with a contextual understanding of DHS's mission and operations. DHS Instruction 262-11-004 "Withholding of Personnel's Personally Identifiable Information From Disclosure," for example, requires DHS staff to withhold from FOIA requests some identifying information concerning DHS employees and contractors under certain circumstances to protect them from potential harassment and other dangers. [38] DHS FOIA Instruction 002-02-002 "Non-Disclosure of Information Protected under 8 U.S.C. Section 1367" prevents the release of information about "a beneficiary of a pending or approved application for victim-based immigration benefit" as defined in 8 U.S.C. § 1367. [39, p. 6] Because of the complexity and highly sensitive nature of first-party information about victims of battery, extreme cruelty, and trafficking, all DHS employees and contractors who access or handle information covered by 8 U.S.C. § 1367 must receive training about these records. Many DHS records that are responsive to first-party requests are complex, multi-document files with a mix of structured and unstructured content with multiple equities, including vulnerable individuals. Determining if exemptions apply to these records in first-party requests involves navigating a full stack of laws, regulations, and policies.

3.3 FOIA Data

Core Findings

- 3.3.1** DOJ requires agencies to count first-party requests where agencies use FOIA or FOIA resources as FOIA requests.
- 3.3.2** First-party FOIA requests are not counted as a distinct FOIA request category in annual FOIA reporting.
- 3.3.3** FOIA staffing data play an important role in judging the merits of moving requests for a first-party record type out of FOIA. While FOIA and DOJ mandate agencies to annually report their FOIA staffing levels, there is some inconsistency in how DHS components count FOIA workforce data. In particular, FOIA programs do not consistently capture the labor expended by other offices to search for and capture responsive records.

⁷ Section 5 U.S.C. § 552a(t) states, "(1) Effect of Other Laws.— No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section. (2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title."

Although FOIA mandates detailed reporting requirements on agencies, these requirements do not ask for reporting on first-party FOIA requests as a distinct request category. [40] Following the framework of the law, OIP does not ask agencies to report the number of first-party request they receive as a separate request type in their annual reports. Although OIP asks agencies to report on requests in Simple, Complex, and Expedited tracks, these tracks are not effective proxies for first-party requests for many agencies.

OIP does instruct agencies to include first-party requests “which require the agency to utilize the FOIA in responding to the requester” in their count of FOIA requests. [41, p. 22] Thus, first-party FOIA requests are included in the numbers reported in agencies’ annual reports.⁸ There can be a challenge, depending on how an agency internally manages its FOIA data, to accurately parsing out first-party requests from other types of FOIA requests. This often requires triangulation with other resources and careful reading of FOIA data in the context of how individual FOIA programs operate. A significant portion of agencies track first-party requests as distinct request categories for their internal management and reporting needs, although how and what agencies count as first-party FOIA requests vary from agency to agency.

FOIA staffing data play an important role in judging the merits of moving requests for a first-party record type out of FOIA. FOIA, at 5 U.S.C. § 552(e)(1)(O), requires agencies to report the number of full-time staff and total costs expended by agencies to process FOIA requests. OIP has in turn instructed agencies to provide data in their annual FOIA reports on the number of “Full-Time FOIA Employees,” number of “Equivalent Full-Time FOIA Employees,” total number of “Full-Time FOIA Staff,” “Processing Costs,” “Litigation-Related Costs,” and “Total Costs.”⁹ [41, pp. 58-59]

In its assessment, HSSEDI observed some inconsistencies in how these data are collected within and across DHS components. In particular, the cost of labor expended by staff outside of FOIA programs on records search and capture for first-party FOIA requests is not counted by multiple DHS component FOIA programs in their Equivalent Full-Time FOIA Employees data. Because these employees or contractors are situated outside of FOIA programs, these programs do not have an easy way to capture the time they spend on FOIA tasking or the cost of that time. Searching for responsive records in recordkeeping systems is a critical piece of the FOIA process and is a source of multiple DHS components’ backlogs.

⁸ As noted in Section 1.1, starting in 2008, OIP has asked agencies to not count requests handled exclusively through the Privacy Act as a FOIA request in their annual FOIA reporting.

⁹ OIP defines a Full-Time FOIA Employee as “a full-time employee who performs FOIA duties 100% of the time”; Equivalent Full-Time FOIA Employees as “employees performing less than full-time FOIA duties”; Full-Time FOIA Staff as “the combined total of full-time FOIA employees and equivalent full-time employees”; Processing Costs as “the sum of all costs expended by the agency for processing FOIA requests at the initial request and administrative appeal levels,” which includes the “salaries of FOIA personnel, overhead, and any other FOIA-related expenses”; Litigation-Related Costs as the “sum of all costs expended by the agency in litigating FOIA requests” which includes the “salaries of personnel involved in FOIA litigation, litigation overhead, attorney fees and costs, and any other FOIA litigation-related expenses”; and Total Costs as the “sum of the processing and litigation-related costs.” [41, pp. 58-59]

3.4 Privacy Compliance and Privacy Engineering

Core Findings

- 3.4.1** DHS documents the means through which people can request information about themselves stored in DHS systems in the Department's Privacy Impact Assessments.
- 3.4.2** It is beneficial to frame first-party requests as primarily a privacy and systems engineering challenge rather than a FOIA challenge. This framing can be understood by incorporating privacy engineering into the full systems engineering lifecycle of information systems containing PII.
- 3.4.3** The Fair Information Practice Principles (FIPPs), especially the principle of Access and Amendment, drive DHS's commitment to enable people to make first-party requests for information about themselves and to provide that information to the greatest extent possible.
- 3.4.4** Privacy by design principles, implemented through privacy engineering, incorporate privacy principles and compliance obligations into a full range of activities, including the design of systems.
- 3.4.5** Agencies should undertake analysis of first-party request demands for systems and processes with PII that considers request volume, requester needs, and the role and nature of the responsive records.
- 3.4.6** The first-party request analysis should result in purposefully designed request capabilities that enable agencies to respond to requests in a timely, accurate, safe, and equitable manner.

3.4.1 Documenting First-Party Request Demand Signal

DHS describes in PIAs how people can make first-party requests for DHS-held information about themselves in compliance with departmental instructions and the E-Government Act of 2002 (codified at 44 U.S.C. 3501 note). That act requires all agencies to complete PIAs when an agency develops or procures an IT system that "collects, maintains, or disseminates" identifiable information or starts a new collection of information that leverages IT resources and contains identifiable information for ten or more people.¹⁰ [42] The law requires OMB to issue guidance on the required elements of PIAs and mandates that the guidance require that PIAs document what information is being collected and why, the intended use of the information, with whom the information will be shared, notices or opportunities for consent provided to individuals, how the information is secured, and whether a system of record as defined by the Privacy Act is being created.¹¹ [42] OMB issued requirements for PIAs in Memorandum 03-22 "OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002." M-03-22 establishes requirements for conducting PIAs as a process and creating formal PIA documents.¹²

¹⁰ At section 208(b)(1)(A).

¹¹ At section 208(b)(2).

¹² OMB also discusses PIAs as a process and a formal document in OMB Circular A-130 "Managing Information as a Strategic Resource."

Building on the instructions of the E-Government Act of 2002 and OMB, DHS PRIV issued multiple versions of guidance for DHS components conducting and writing PIAs during the 2000s.¹³ The current version that guides DHS PIA practice was issued in 2010. [43] This guidance delineates eight sections that comprise a DHS PIA document.¹⁴ Section 7.0 Redress is the most relevant to first-party requests pursued through FOIA or other means. This section asks, “what are the procedures that allow individuals access to their information?” It instructs people completing the PIA to describe procedures or regulations that allow access to information and notes that answers to this question should reference FOIA and Privacy Act processes. The guide encourages the inclusion of additional mechanisms for providing access to information in the response to this question. [43, p. 27] This section also asks a question on the procedures for individuals to ask for DHS to correct inaccurate information about themselves. It also asks for a discussion of any avenues of redress provided to individuals beyond what FOIA and the Privacy Act afford, such as allowing users to directly access and correct or update information about themselves online. [43, p. 28] Therefore, DHS guidance allows components to document alternative means for requesting first-party information in PIAs.

As part of its review of selected DHS first-party FOIA and FOIA-alternative solutions (Section 3.7), HSSEDI observed in its review of DHS PIAs that while these documents identified the legal vehicles for enabling people to request and access their own information, usually the Privacy Act and FOIA, they did not examine how these requests are answered in a timely or accurate fashion. Volumes of first-party requests for information from these systems, the resources needed to fulfill these requests, and what information is specifically sought in these requests are not discussed in these PIAs.

Analysis of these issues provides DHS with opportunities to identify effective solutions for responding to first-party requests through FOIA or other means. However, adding this analysis as a mandatory element to DHS PIA documents poses the risk of this analysis merely becoming a “check the box” exercise that does not improve first-party request processes. As currently constituted, DHS PIAs remain a valuable tool for analyzing systems and processes that manage frequently requested first-party records. In-depth analyses of systems’ first-party request capacity that will materially improve request services need to be carried out in the context of privacy engineering activities that are in support of privacy by design principles.

3.4.2 Incorporating First-Party Request Analysis into Systems Design and Engineering

Refocusing first-party requests as primarily a privacy and systems design rather than a FOIA challenge involves incorporating analysis of first-party request demand for records into all systems lifecycle engineering phases, including requirements development, acquisition, and implementation of systems that handle first-party records. Incorporating first-party request

¹³ PIAs fit within DHS’s privacy compliance process that includes privacy threshold analysis, PIAs, system of records notices, and periodic reviews. [88]

¹⁴ Section 1.0 Authorities and Other Requirements, Section 2.0 Characterization of the Information, Section 3.0 Use of Information, Section 4.0 Notice, Section 5.0 Data Retention by the Project, Section 6.0 Information Sharing, Section 7.0 Redress, and Section 8.0 Auditing and Accountability.

capacity into the design and development of information systems is essential for enabling agencies to effectively manage these requests, avoid backlogs, and mitigate associated privacy risks.

Privacy risks involved in first-party requests handled through FOIA or other means include the risk that a government agency is not able to completely fulfill individuals' requests for information about themselves and the risk that, in providing first-party records to a requester, agencies inappropriately release PII about another person. These threats can be categorized using MITRE's Pattern and Action Nomenclature of Privacy Threats in Context (PANOPTIC) Privacy Threat Model.¹⁵ This threat model "seeks to identify the ways privacy threat agents can exploit vulnerabilities in digital, physical, and social systems." [44, p. 1] PANOPTIC emphasizes the contextual nature of privacy risks and the threats to individual people rather than systems or institutions. This model contains a two-part taxonomy of Contextual Domains that describe the characteristics of the "socio-technical environment" and Privacy Activities that describe "potential privacy attack components" identified as threat actions. [44, p. 2] Threat action PA07.01 "No individual access to information" effectively describes the threat of people not being able to retrieve records about themselves from agencies.¹⁶ The risk that an agency would inadvertently release PII about another person to a first-party requester potentially maps to multiple threat actions, including PA04.01 "Insufficient access controls," depending on the circumstances of the incident. [44, p. 34] This mapping demonstrates that management of first-party requests can be conceptualized primarily as a privacy management challenge. As MITRE continues work on the PANOPTIC Privacy Threat Model, future releases merit monitoring.

An examination of these first-party request privacy risks at the level of privacy principles should be anchored by the FIPPs, which are concepts that serve as the foundation for privacy laws and guidance. The FIPPs inform DHS's handling of requests for first-party information. The FIPPs originally emerged from a 1973 report, "Records, Computers and the Rights of Citizens," issued by an advisory committee to the Secretary of Health, Education, and Welfare and have been revised over the years. [45] DHS PRIV memorialized the FIPPs "as the foundational principles for privacy policy and implementation" at DHS in a 2008 privacy policy guidance memorandum.¹⁷ [46] DHS reiterated its adoption of the FIPPs in a 2011 directive. [47]

The principles contained in the FIPPs have evolved over time. The FIPPs documented in OMB Circular A-130 "Managing Information as a Strategic Resource," which are considered to be the authoritative FIPPs for federal agencies, contain nine principles.¹⁸ Access and Amendment is the core principle for managing first-party requests. This principle states that "Agencies should provide individuals with appropriate access to PII and appropriate opportunity to correct or amend PII." [48, pp. Appendix II, 2] Having the capability to effectively manage and respond to

¹⁵ MITRE PANOPTIC, Version 1.0, is available at <https://ptmworkshop.gitlab.io/#/panoptic>.

¹⁶ PANOPTIC defines PA07.01 as "individual or their proxy cannot obtain or view their collected personal data." [44, p. 35]

¹⁷ The version of the FIPPs this memo cites contains eight principles. This version does not contain the Access and Amendment principle. However, it does contain an Individual Participation principle that notes that "DHS should also provide mechanisms for appropriate access, correction, and redress regarding DHS's use of PII." [46, p. 3] In a 2011 discussion of FIPPs in practice at the Department, DHS PRIV noted that people can correct information about themselves held by DHS through FOIA and Privacy Act processes. [85] Changes to the versions of the FIPPs notwithstanding, it is clear that DHS follows FIPPs that substantively include a principle for people to be able to request and receive information about themselves.

¹⁸ The nine principles are: Access and Amendment, Accountability, Authority, Minimization, Quality and Integrity, Individual Participation, Purpose Specification and Use Limitation, Security, and Transparency. [48]

first-party requests is a fundamental element of agencies' privacy programs. Additionally, the Security FIPPs principle states that "Agencies should establish administrative, technical, and physical safeguards to protect PII commensurate with the risk and magnitude of the harm that would result from its unauthorized access, use, modification, loss, destruction, dissemination, or disclosure." In the context of first-party requests, agencies must take steps to ensure that released records are scrubbed of PII about third-party individuals and that only information requested about individuals is shared with an authorized and verified requester. Following the FIPPs, agencies must enable timely release of records to first-party requesters while insuring they do not harm the privacy interest of third-party individuals in the process.

Adhering to these principles requires more than merely relying on Privacy Act and FOIA request processes and resources to meet the demands of first-party requests and balance multiple privacy interests. It requires an embrace of privacy by design, carried out by privacy engineering that incorporates privacy considerations into the full systems engineering lifecycle of systems that contain first-party records. Privacy by design is a framework of design principles that assert that privacy must be agencies' default mode of operation where it is not just a policy but is present in all operational levels, from governance to processes and procedures, to system architecture and development, to hands-on data management. Key privacy by design principles for managing first-party requests include "proactive not reactive; preventative not remedial" and "privacy embedded into design."¹⁹ Depending on agency FOIA programs to handle first-party requests as a default without accounting for the implications of requests' demands during the design, acquisition, and implementation phases of new systems or programs that collect PII is a reactive approach that does not embed the privacy needs of requesters—which includes the need to access their records—into the design of those systems. In many instances agencies will conclude that FOIA remains the most effective means to handle first-party requests for records from a particular system. Agencies should come to that conclusion after rigorous systems engineering analysis conducted during the development or reevaluation of systems rather than through after-the-fact assumptions that the FOIA program is the best way to handle these requests.

Privacy engineering operationalizes privacy by design principles through systematic, risk-driven processes. The National Institute of Standards and Technology defines privacy engineering as a "specialty discipline of systems engineering focused on achieving freedom from conditions that can create problems for individuals with unacceptable consequences that arise from the system as it processes PII." [49, pp. 10-11] Privacy engineering involves integrating privacy into systems engineering processes and system development and acquisition processes and verifying and validating that these capabilities have been appropriately implemented and reflect stakeholder expectations. In the context of first-party requests, this involves, among other activities, incorporating request capabilities into requirements for systems that handle PII.

NARA, for example, incorporates three FOIA requirements focused on searching for and exporting records in its Universal Electronic Records Management (UERM) Requirements. Although not specific to first-party FOIA requests, this does illustrate an incorporation of request

¹⁹ The seven privacy by design principles are (1) proactive not reactive—preventative not remedial; (2) privacy as the default setting; (3) privacy embedded into design; (4) full functionality—positive sum, not zero sum; (5) end-to-end security—full lifecycle protection; (6) Visibility and transparency—keep it open; and (7) respect for user privacy—keep it user-centric. [89]

needs into system requirements. [50] The Records Management Subcommittee of the 2018-2020 FOIA Advisory Committee recommended that NARA “further develop the idea of public access to Federal records, including through FOIA,” encouraging NARA to continue incorporating FOIA capabilities into future versions of the UERM. [51, p. 8] More broadly, NARA has acknowledged the importance of effective records management programs to the success of FOIA programs, adding questions to its annual surveys about records management programs’ collaboration with their agencies’ FOIA programs. [52]

When designing first-party request capabilities into systems, agencies should consider:

- Request Volume
 - The volume of first-party requests the agency is likely to receive for records in the system under analysis.
- Requester Needs
 - The processes requesters are engaging. (Are requesters trying to secure a benefit or file and manage a complaint, or are they a party to an administrative, civil, or criminal court proceeding?)
 - The specific goals requesters are trying to accomplish when making these first-party requests.
 - Deadlines requesters are operating under in trying to accomplish those goals.
 - Associated services requesters need beyond retrieving records. (Do requesters need help navigating a service? Are requesters trying to execute a transaction while also trying to retrieve information?)
- Role of the Responsive Records
 - The role of the requested records in helping requesters achieve their goals.
 - The specific information within the responsive records that requesters need. (Do requesters need the entirety of the responsive records or only certain pieces of information within the responsive records?)
- Nature of the Responsive Records
 - The need to transform responsive records, such as digitizing paper records, before their review and release to requesters.
 - The presence of PII of third-party individuals in the responsive records.
 - The presence of law enforcement sensitive information or other exempt information in the responsive records.
 - The presence of equities held by other agencies in the responsive records.
 - The structure and nature of the responsive records. (Are these, for example, structured or unstructured documents?)
 - The volume of the responsive records.
 - The complexity of reviewing and preparing the records for release to the requesters.

DHS should continue systems engineering analyses of first-party request demands for new systems and processes that handle PII. These analyses may identify opportunities to create and manage well-structured, request-ready first-party records with consistently structured and easily identifiable and removable exempt information. Continued incorporation of such analysis should result in purposefully designed request capabilities (located within the information system containing the PII, FOIA or Privacy Act processes, or other requester-facing services) that enable agencies to respond to requests in a timely, accurate, safe, and equitable manner. This work aligns with DHS PRIV's strategic goal of embedding "privacy safeguards in the Department's policies, programs, activities, and architecture." [5, p. 2]

3.5 Self-Reported FOIA-Alternative Processes

Core Findings

- 3.5.1** Most federal agencies receive first-party requests.
- 3.5.2** Based on responses to 2023 and 2024 CFO reports, the most widely requested first-party records are personnel records, complaint records, loan records, medical records, and case files.
- 3.5.3** Based on responses to 2023 and 2024 CFO reports, the three most common alternative means of access to first-party records are Privacy Act processes that do not rely on the FOIA law or resources, direct contact with program offices or customer service centers, and online portals that provide direct access to first-party records after requesters authenticate themselves in the system.
- 3.5.4** Some agencies allow people to make first-party requests directly to program offices or through customer service centers. These solutions often offer a variety of services to help people navigate government processes or secure benefits in addition to delivering requested records.
- 3.5.5** Online portal solutions that enable people to make requests for first-party records often allow people to carry out a range of activities beyond merely requesting records.

3.5.1 Background

FOIA requires agencies that annually receive more than 50 FOIA requests to deliver an annual Chief FOIA Officer report to DOJ. This narrative report addresses a set of questions posed by OIP and complements agencies' data-centric annual FOIA reports.²⁰ As noted in Section 3.1.1, OIP began asking agencies to identify commonly requested categories of first-party records and to highlight FOIA-alternative means for providing access to these records in their Chief FOIA Officer report beginning in 2021. OIP has modified these questions in the four years it has included them in the CFO report.

²⁰ The reporting period for the annual FOIA report aligns with the federal government's fiscal year. The reporting period for the annual CFO report aligns to the due date for agencies to publicly post these reports, which is mid-March. The reporting period for the 2024 CFO report, for example, was March 13, 2023, through March 11, 2024.

Table 3. Chief FOIA Officer Annual Report Questions About First-Party FOIA Alternatives

CFO Report Year	Report Section	Questions
2021 [53]	Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests	6. Does your agency frequently receive common categories of first-party requests? If so, please describe the types of requests and if your agency has explored establishing alternative means of access to these records outside of the FOIA process.
2022 [54]	Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests	6. Has your agency established alternative means of access to first-party requested records outside of the FOIA process? 7. If yes, please provide examples. If no, please explain if such opportunities exist at your agency and whether there are any challenges in establishing alternative means of access.
2023 [55]	Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs A. Remove Barriers to Access	1. Has your agency established alternative means of access to first-party requested records outside of the FOIA process? 2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.
2024 [56]	Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce 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? 2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know. 3. Please describe any other steps your agency has taken to remove barriers to accessing government information.

OGIS identified categories of commonly requested first-party records based its review of 70 2021 CFO reports. [27] This OGIS study generated four findings:

- Finding 1: Most of the agencies frequently received first-party requests.
 - 43 of 70 agencies (61%) answered yes to the question “Does your agency frequently receive common categories of first-party requests?”
 - 38 of the 43 (88%) agencies that answered yes received more than 100 FOIA requests in FY2020.
- Finding 2: First-party requesters frequently request record types maintained by most agencies.
 - Commonly held first-party record types that were frequently requested included FOIA/Privacy Act request records, law enforcement records, office of inspector

general investigation records, personnel investigation and security clearance records, and several types of employee records.

- Finding 3: First-party requesters frequently request agency-specific record types.
 - OGIS identified 54 record types held by 43 agencies.
- Finding 4: Some agencies provide FOIA-alternative means to access first-party records
 - OGIS identified 19 alternative means to first-party records managed by 19 agencies.
 - These alternative means included 11 online portals where individuals can directly retrieve information about themselves. See Table 6 for more information about these and other online systems.

HSSEDI analyzed the responses to the questions about first-party requests in the 2023 and 2024 CFO reports to identify the common practices that exist across government for implementing FOIA alternatives for responding to first-party requests. There are two areas of analysis: (1) *Record Types* explores the types of records requested, and (2) *Means of Access* examines the types of alternative methods agencies employ to respond to first-party requests.

3.5.2 Record Type Analysis

A review of 68 CFO reports from 2023 identified 24 record types that are sought in first-party requests. HSSEDI conducted a round of open coding then a round of closed coding to derive these categories from responses in the 2023 and 2024 CFO reports. See Table 4 for more details. Some departments and agencies mentioned a record type more than once in their CFO report because they discussed multiple FOIA processing centers. Responses to questions in the CFO reports about first-party requests are unstructured and requested record types are informally described. They are not tied to records retention schedules, PIAs, or SORNs. The precise count of mentions in the CFO reports is less important than the overarching pattern of the types of records that are commonly sought in first-party requests. The record types identified by the most agencies were personnel records, followed by complaint records, loan records, and medical records.

Table 4. Record Types Requested in First-Party Requests as Identified in 2023 CFO Reports

Record Type	Times Mentioned	Agencies Mentioning Record Type
Personnel Records	16	14
Complaint Records	7	7
Loan Records	6	6
Medical Records	6	5
Case Files	4	4
Benefit Records	5	3
Background Investigation Records	2	2

Record Type	Times Mentioned	Agencies Mentioning Record Type
Grant Records	2	2
Inspection Records	2	2
Investigation Records	2	2
Student & Training Records	2	2
Court Records	4	1
Tax Records	3	1
Accident Records	1	1
Case Appeal Records	1	1
Contract Records	1	1
Disaster Assistance Records	1	1
Employment Application Records	1	1
Facility Records	1	1
Financial and Accounting Records	1	1
Health Care Data	1	1
Immigration Case Records	1	1
Trademark and Patent Records	1	1

3.5.3 Alternative Means of Access Analysis

Most agencies responded in their 2023 CFO report that they have established “alternative means of access” to first-party requests. Most of the agencies that reported that they do not have an alternative means of access receive less than 1,000 FOIA requests a year. See Figure 8 for more details. Responses in this figure are clustered by the number of FOIA requests agencies received in FY2021. As noted with the discussion about requested first-party records, these data about agencies establishing alternative means of access should be read with caution. In some cases, agencies indicated they had set up an alternative means of access but were really referring to proactively releasing records online rather than providing access to first-party records in an alternative manner. HSSDI did not adjust these response data in Figure 8 to account for this noise in these data. It is more beneficial to read these response data for the general patterns rather than precise figures.

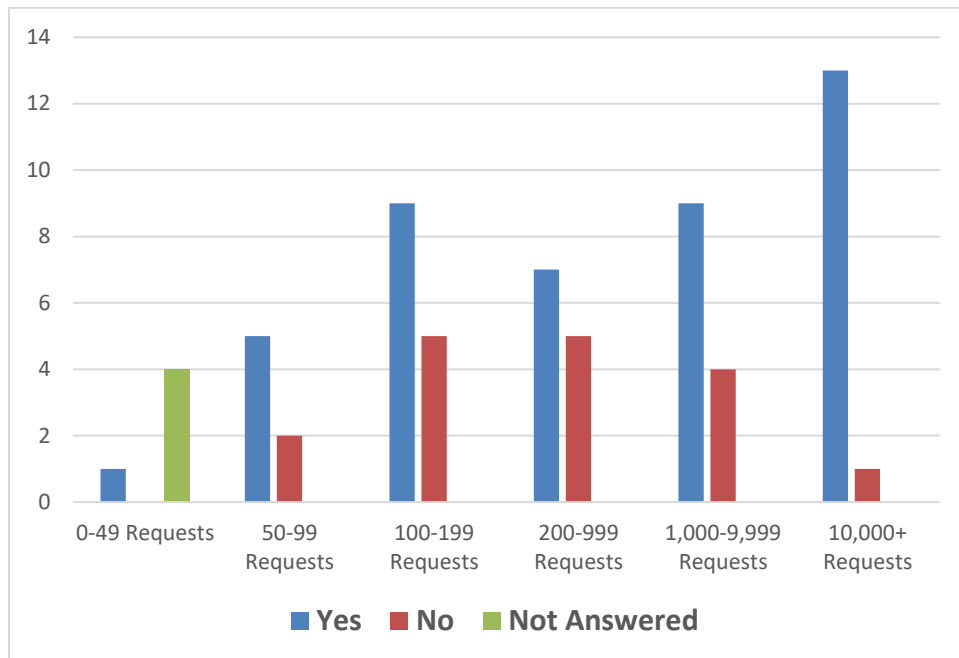


Figure 8. Responses to the Question, “Has your agency established alternative means of access to first-party requested records outside of the FOIA process?” in 2023 CFO Reports

Three main types of alternative means of access are described in the 2023 and 2024 CFO reports: Privacy Act processes, direct contact with program offices, and online portals. HSSEDI conducted a round of open coding then a round of closed coding to derive these categories from CFO report responses. As with the preceding CFO report data, these figures should be read with caution and focus should be placed on the broad patterns of practice that they reveal. A review of which alternative means of access are used for the most widely requested first-party record types, as identified in 2023 CFO reports, is in Table 5.

- **Privacy Act**

- 17 of 68 agencies (25%) reported in their 2023 CFO reports that they used Privacy Act processes separate from FOIA to address first-party requests. 13 of 47 (28%) available 2024 CFO reports indicated that agencies used the Privacy Act to address these requests despite OIP asking agencies to point out only alternative means outside of typical FOIA and Privacy Act processes. Four agencies reported in their 2023 CFO report using Privacy Act processes to provide access to personnel records.

- **Direct Contact with Program Offices and Customer Service Centers**

- 12 of 68 agencies (18%) reported in their 2023 CFO reports that they had processes in place that enabled people to directly contact program offices that managed the records first-party requesters are seeking. In addition, five agencies indicated that they leveraged existing customer service/call centers to, at least initially, handle first-party requests. 14 of 68 agencies (21%) used at least one or both means of access. In the 2024 CFO reports 8 of 47 agencies (17%) enabled requesters to work directly with program offices. 10 of 47 agencies used either that method or customer service centers

to manage first-party requests. In many instances providing access to programs or customer service centers enabled agencies to answer requesters' questions or help people navigate government services beyond just strictly providing access to requested records.

- **Online Portal**

- 16 of 68 agencies (24%) reported in their 2023 CFO reports that they used an online portal that allowed people to log in, request, and receive first-party records. 13 of 47 agencies (28%) reported in their 2024 CFO reports making such portals available to requesters. Some agencies mentioned multiple portals in their reports. Many of these portals allow people to carry out a range of activities beyond requesting records, such as filing complaints or applications. For example, people can use the Social Security Administration's *my Social Security* portal to estimate future benefits or request a replacement Social Security card in addition to retrieving their benefits information. See Table 6 for a list of online portals identified in the 2023 and 2024 CFO reports, excluding those identified by DHS.

Table 5. Alternative Means of Response for the Most Commonly Identified Record Types in the 2023 CFO Reports

Record Type	Times Mentioned	Agencies Mentioning Record Type	Alternative Means
Personnel Records	16	14	Privacy Act Process (4 Agencies) Directly Contact Program (2 Agencies) Online Portal (2 Agencies) Process Not Identified (6 Agencies)
Complaint Records	7	7	Directly Contact Program & Customer Service Center (3 Agencies) Online Portal (2 Agencies) Privacy Act Process (1 Agency) Alternative Regulatory Request Process (1 Agency)
Loan Records	6	6	Directly Contact Program & Customer Service Center (3 Agencies) Online Portal (1 Agency) Process Not Identified (2 Agencies)
Medical Records	6	5	Directly Contact Program (3 Agencies) Process Not Identified (2 Agencies)
Case Files	4	4	Directly Contact Program (3 Agencies) Privacy Act Process (1 Agency)
Benefit Records	5	3	Directly Contact Program & Customer Service Center (2 Agencies) Online Portal (1 Agency)

Record Type	Times Mentioned	Agencies Mentioning Record Type	Alternative Means
			Process Not Identified (1 Agency) ²¹

Table 6. Online Portals Identified in the 2023 and 2024 CFO Reports Excluding DHS

Agency	Record Types	Portal	Notes
Department of Agriculture (Food Safety and Inspection Service)	Inspection Records	Public Health Information System https://www.fsis.usda.gov/inspection/compliance-guidance/phis	Regulated entities can use the portal to gain access to inspection, compliance verification, notification, and monitoring records.
Department of Commerce (U.S. Patent and Trademark Office)	Trademark and Patent Records	MyUSPTO https://my.uspto.gov/	Registered users can use the portal access their trademark and patent application information.
Department of Commerce (U.S. Patent and Trademark Office)	Trademark Records	Electronic System for Trademark Trials and Appeals (ESTTA) https://estta.uspto.gov/	Parties before the Trademark Trial and Appeal Board can use the ESTTA to access records.
Department of Commerce (U.S. Patent and Trademark Office)	Patent Records	Patent Trial and Appeal Case Tracking System (P-TACTS) https://ptacts.uspto.gov/ptacts/ui/home	Parties before the Patent Trial and Appeal Board can use P-TACTS to access records.
Department of Defense (Defense Finance and Accounting Service)	Financial and Accounting Records	AskDFAS https://www.dfas.mil/dfas/AskDFAS/	AskDFAS does not, strictly speaking, provide direct access to first-party requests. The portal does provide answers to a wide range of questions and points requesters, including service members, retirees, civilian employees, and contractors, to resources for accessing financial and accounting information.
Department of Defense (U.S. Army)	Personnel Records	Interactive Personnel Electronic Records Management System	Allows requesters to access Army personnel records.

²¹ One agency discussed two alternative means of access to benefit records.

Agency	Record Types	Portal	Notes
		https://iperms.hrc.army.mil/	
Department of Health and Human Services (Centers for Medicare and Medicaid Services)	Health Care Data	Medicare Blue Button https://bluebutton.cms.gov/	Delivers Medicare data to requesters.
Department of Health and Human Services (Indian Health Service)	Medical Records	Personal Health Record https://phr.ihs.gov/phr/PHR Login	Patients and their representatives can access patient records through the portal.
Department of Housing and Urban Development (Region 5)	Loan Records	Single Family Asset Recovery Technology Integrated Portal https://sip.hudnsc.org/	This portal provides access to loan information and services.
Department of Justice (Executive Office for Immigration Review)	Court Records	EOIR Courts & Appeals System (ECAS) https://www.justice.gov/eoir/ECAS	People can use ECAS to file documents and view records of proceedings and court filings in Immigration Court proceedings.
Department of Justice (Executive Office for Immigration Review)	Court Records	Automated Case Information System (ACIS) https://acis.eoir.justice.gov/en/	People can use ACIS to access case information.
Consumer Financial Protection Bureau	Complaint Records	Consumer Financial Protection Bureau Portal https://portal.consumerfinance.gov/	Consumers can use the portal to look up information about the complaint(s) they have submitted to the Bureau.
Environmental Protection Agency	Facility Records	MyProperty https://enviro.epa.gov/facts/myproperty	Enables people to determine if the EPA has a record about a property in its Facility Registry System.
Merit Systems Protection Board	Case Appeal Records	e-Appeal https://e-appeal.mspb.gov/	Requesters can use the portal to retrieve their appeal case records as well as file new appeals.
National Archives and Records Administration (National Personnel Records Center)	Personnel Records	eVetRecs Online Service Records Request https://vetrecs.archives.gov/VeteranRequest/home.html	Veterans and veterans' next of kin can use the portal to request their military service records.
National Endowment for the Arts	Grant Records	National Endowment for the Arts REACH https://reach.arts.gov/	Grant applicants can use the portal to review their application materials.

Agency	Record Types	Portal	Notes
Pension Benefit Guaranty Corporation	Benefit Records	MyPBA https://www.pbgc.gov/mypba	Requesters can use the portal to access income verifications, pension beneficiary designations, benefit election forms, and benefit determinations.
Social Security Administration	Multiple Record Types	my Social Security https://www.saferproducts.gov/	Individuals can use the portal to check benefit information as well as other activities such as estimate future benefits or request a replacement Social Security card.
U.S. Consumer Product Safety Commission	Complaint Records	SaferProducts.gov https://www.saferproducts.gov/	Requesters can use the portal to access their consumer complaints about unsafe products.

3.6 Selected Peer Agency First-Party FOIA Alternatives

Core Findings

- 3.6.1** DOJ's Executive Office of Immigration Review (EOIR) and the Office of Refugee Resettlement at the Department of Health and Human Services (HHS) provide examples of online systems for requesters to access immigration-related records.
- 3.6.2** NARA's National Personnel Records Center (NPRC) and the VA provide examples of online systems for veterans to request their service and benefits records.
- 3.6.3** The Internal Revenue Service (IRS) and the Social Security Administration (SSA), as well as the VA and EOIR, provide examples of agencies establishing systems that enable requesters to conduct a range of business or receive assistance in addition to requesting access to their records.
- 3.6.4** The Environmental Protection Agency (EPA) and DOJ's Federal Bureau of Investigation (FBI) demonstrate examples of deploying systems that enable requesters to quickly establish if agencies have no records that are responsive to their inquiries.

This analysis takes a closer look at alternative means of access to first-party records at selected agencies. It is organized by the themes of access to immigration-related records, access to veterans' service and benefits records, conducting business in addition to requesting records, and returning a result of no responsive records to requesters.

3.6.1 Alternative Means of Access for Immigration-Related Records

The EOIR within DOJ and the Office of Refugee Resettlement (ORR) in HHS provide examples of peer agencies with alternative means of access for immigration-related records. These efforts are discussed below.

In 2023, OGIS published an overview of accessing immigration records through FOIA requests. [57] OGIS reviewed records from USIC, CBP, ICE, and the Office of Biometric Identity Management (OBIM) within DHS; NARA; EOIR within DOJ; and ORR within HHS. The overview describes types of immigration records, where to submit requests for these records, and what information to include in those requests.

3.6.1.1 Department of Justice, Executive Office of Immigration Review

DOJ has highlighted in its CFO reports the work undertaken by EOIR to enable alternative means of access to immigration court records through the strategies of enabling requesters to request records directly from program offices, request records through a call center, and request records through online portals starting in 2022.²² EOIR has enabled respondents and their representatives to directly request a copy of their cases' record of proceeding (ROP) directly from the immigration court or the Board of Immigration Appeals. In addition, EOIR has enabled attorneys and non-citizens to gain access to basic case status information through a call center and an online system, ACIS (<https://acis.eoir.justice.gov/en/>). [58, pp. 24-25] [59]

Additionally, EOIR began to deploy ECAS (<https://www.justice.gov/eoir/ECAS>) in 2018. ECAS enables lawyers and government officials to retrieve and file a variety of documents with immigration courts, adjudication centers, and the Board of Immigration Appeal. ECAS is an example of a portal enabling requesters to conduct a variety of business beyond just retrieving records. The 2020-2022 FOIA Advisory Committee noted that ECAS "is a large step in the right direction of providing timely access to electronic ROPs." [26, p. 23] Although the Committee also recommended in Recommendation 2022-12 that agencies, including EOIR at DOJ, should "provide individuals, regardless of whether they have legal representation in agency proceedings, access to records about themselves." [26, p. 22]

ECAS and ACIS deliver ROPs, basic case information, and other court records that do not typically contain information that would be exempt from requesters, making the implementation of these FOIA-alternative processes feasible. The U.S. Attorney General highlighted EOIR's work as he urged agencies to look for opportunities to remove barriers to requesting and accessing records in his 2022 FOIA memo. [25, pp. 2-3]

3.6.1.2 Department of Health and Human Services, Office of the Administration for Children & Families, Office of Refugee Resettlement

Attorneys, parents, or sponsors can bypass FOIA and directly contact ORR to request unaccompanied alien child case files after submitting an Authorization for Release of Records form. The form includes directions on how to complete the form and getting records released. The form is part of a larger set of online guidance on key documents for ORR's Unaccompanied

²² Even with implementing these alternative means of access, EOIR remains the largest DOJ FOIA processing center, receiving over 70,000 FOIA requests in FY2023, which accounted for 63% of all FOIA requests received by DOJ during that fiscal year. [58, p. 3]

Children Program and other support that includes a call center. [60] ORR provides an example of an agency that enables people to request immigration-related records through direct contact of a program office.

3.6.2 Alternative Means of Access for Veterans' Service and Benefits Records

The VA and the NPRC at NARA enable veterans and their families to retrieve benefits, health, and service records through alternative means of access that are critical for members to receive the care, benefits, and services they need and have earned.

3.6.2.1 Department of Veterans Affairs

The VA enables requesters to make first-party requests for their records by contacting various health and benefits offices directly and through the online portal Myhealthvet (<https://www.myhealth.va.gov/mhv-portal-web/home>). This tool allows veterans to conduct a variety of business, including making appointments, and retrieve their medical records, reports, and images. Veterans can also access and download their VA benefit summary letters and other key records through the VA records portal (www.va.gov/records).

Despite the implementation of these first-party FOIA-alternative solutions, the VA still received almost 80,000 FOIA requests in FY2023, most of which were first-party requests. The agency continues to seek the most effective response processes for requesters both inside and outside FOIA. When possible, VA FOIA programs redirect requesters to program offices, especially when requesters seek help in navigating a benefits process and would gain from receiving advice directly from these program offices. These efforts to effectively respond to first-party requests for records, whether through FOIA or other means, are a high-visibility priority for the VA.²³

3.6.2.2 National Archives and Records Administration, National Personnel and Records Center

NARA enables veterans and family members to request their own or a family member's military service records directly from the NPRC. Requesters can submit their requests electronically through eVetRecs. The NARA website contains guidance on how to access these service records and where service records are located across the federal government in civilian agencies and the military services. [61] [62] This guidance includes a notice directing requesters to a Navy Judge Advocate General online portal to make claims under the Camp Lejeune Justice Act (<https://www.navy.mil/clja/>).

3.6.3 Alternative Means of Access and Conducting Other Business

The IRS and SSA provide examples of alternative means of access for first-party records that operate in the context of providing a range of services that enable people to conduct a variety of business beyond just retrieving their first-party records. As noted in Sections 3.6.1 and 3.6.2,

²³ The VA is required by the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022, contained within the Consolidated Appropriations Act, 2023, to submit a plan for improving FOIA compliance and incorporating technological improvements into its FOIA processes to the U.S. House and U.S. Senate Committees on Veterans' Affairs and to send both committees annual progress reports for five years. [90]

respectively, EOIR and the VA also enable requesters to conduct a variety of transactions in addition to retrieving records about themselves.

3.6.3.1 Department of Treasury, Internal Revenue Service

The IRS enables people to file tax returns, make payments, and apply for an employer ID number, among other activities, online. The agency also enables people to request their tax records online without making a FOIA request (<https://www.irs.gov/individuals/get-transcript>). In response to these first-party requests for tax records, the IRS returns tax transcripts, which include tax returns, tax account information, wage and income statements, and verification of non-filing letters. The transcripts are generated from data managed on multiple IRS databases. The First-Person FOIA Working Group of the 2020-2022 FOIA Advisory Committee, which studied the IRS's online creation and delivery of tax transcripts as an alternative means of access, noted that the agency sees this process as an "efficient, time-saving response" to first-party requests. [63, p. 4]

3.6.3.2 Social Security Administration

SSA has noted in its annual Chief FOIA Officer reports that people can request a variety of first-party records through the *my* Social Security portal (<https://www.ssa.gov/myaccount/>). In addition to merely receiving records through this portal, people can conduct a variety of business through it, including requesting a replacement Social Security card, estimating benefits, and setting up direct deposit. Through the portal a person can also get proof of not receiving a benefit, which is akin to the services described in Section 3.6.4 for request services that provide evidence that an agency does not have a particular set of records.

3.6.4 Alternative Means of Access to Determine No Responsive Records

EPA and the FBI provide examples of managing first-party requests through FOIA and alternative means where "no responsive records" results provide documentation that is just as valuable as receiving responsive records.

3.6.4.1 Environmental Protection Agency

EPA has identified its MyProperty (<https://enviro.epa.gov/envirofacts/myproperty/search>) tool as an alternative means of access to first-party records in its 2023 and 2024 CFO reports. MyProperty is a public interface tool that allows users to query and access data in the EPA Facility Registry System about specific properties. This is not, in the strictest sense, an alternative means of access system for first-party records because users can access records through MyProperty without authenticating their identity. It does illustrate an online portal system that alleviates the need to submit FOIA requests, something EPA highlights on the MyProperty website and its FOIA website. Additionally, MyProperty issues certificates stating that the search of a particular address did not locate any records, enabling stakeholders to document that EPA does not have environmental contamination records about a property. MyProperty issued 9,069 no records certificates in FY2022. [64, p. 25]

3.6.4.2 Department of Justice, Federal Bureau of Investigation

The FBI enables people to submit requests for their own files within FOIA and through alternative means. When receiving electronically submitted first-party requests for investigation

records, the FBI FOIA program automatically searches for responsive records in the FBI's Central Records System. Approximately two-thirds of these searches returned a "No Records" result in FY2022. [65, p. 29] The FBI also enables people to submit first-party requests for their criminal history records by postal mail or online to the Identity History Summary Checks system (<https://www.edo.cjis.gov/>) that is managed by the Criminal Justice Information Services Division. This process involves requesters submitting physical or digital fingerprints. When there are no responsive criminal history records, the FBI will send a response to requesters documenting that it does not have a criminal history record of the requester. Getting a "no records" response from the FBI is often just as valuable—if not better—for requesters as receiving a set of responsive criminal history records.

3.7 Selected DHS First-Party FOIA and FOIA Alternatives

Core Findings

- 3.7.1** There may be opportunities at multiple components for FOIA programs to work with human resources offices to move requests for personnel records and some investigation records out of FOIA when the responsive records do not require complicated review.
- 3.7.2** The core challenge DHS PRIV has in responding to first-party FOIA requests for IDENT records is in verifying requesters' identities and searching for responsive records. The best opportunities for improving the processing of these requests, whether within FOIA or through an alternative means of access, will come from improving requester verification and records search processes.
- 3.7.3** The complex nature of the A-File, the investments made by USCIS in its FOIA processes, the specialized skills of the Immigration Records and Identity Services (IRIS) workforce, and USCIS's demonstrated ability to keep pace with A-File requests through FOIA since 2021 make it unlikely that an alternative means of access would improve the response to A-File requests or not cause significant disruption during the transition to a new process.
- 3.7.4** Opportunities for significantly improving USCIS's processing of A-File requests lie in changes to how A-Files are created and managed rather than changes to how A-File requests are processed.
- 3.7.5** The nature of ICE encounter records and the current challenges of processing requests for these records do not suggest that merely shifting the responsibility of managing the requests for these records to another program would readily improve ICE's processing of these requests. Shifting FOIA requests directly to program offices does not address their challenges in searching for responsive records. There may be opportunities to explore generating exports of case summaries, apprehensions, and encounter locations and dates that meet requesters' needs.
- 3.7.6** CBP processes FOIA requests for a wide variety of first-party records. There may be opportunities to improve the processing of requests for certain types of records by investigating possibilities for changing how these records are created and

structured to enable easier delivery of responsive records that minimizes the need for manual review.

3.7.7 CBP's I-94 online portal provides an example of a DHS component providing an alternative means of access to first-party records through an online portal.

3.7.8 Requesters are often seeking help navigating disaster assistance provided by FEMA in addition to looking for first-party records. FEMA steers most requesters to directly contact program offices through call centers or disasterassistance.gov. Continued collaboration between the FOIA program and assistance programs on enhancing public-facing communication that directs people to the services that best meet their needs is the key to moving most of these requests out of FOIA and best serving disaster survivors.

This assessment includes an analysis of specific types of first-party records that are frequently requested via FOIA at DHS PRIV, USCIS, ICE, CBP, and FEMA; see Table 7. Additional details of this analysis of each record type are in Appendix E. The analysis in this section also contains a cross-cutting discussion of handling first-party requests for personnel records, background investigation records, internal investigation records, and equal opportunity records.

Table 7. Components and Record Types

Component	Record Type
Multiple DHS Components and HQ Offices	• Personnel, Background Investigation, and Equal Opportunity Records
DHS PRIV	• IDENT Records
USCIS	• Alien Files
ICE	• Encounter Records
CBP	• Trusted Traveler Records • Apprehension Records • Passenger Name Records • I-94 Arrival/Departure Records
FEMA	• Disaster Assistance Records

3.7.1 Personnel and Background Investigation Records at Multiple Components

In the course its analysis of frequently requested first-party records listed in Table 7, HSSEDI also briefly examined equal opportunity records at ICE, personnel records and background investigation records at CBP, and internal investigation records at CBP and FEMA. First-party requests for some of these records do not require extensive document review and may include opportunities to shift management of these requests to the offices that manage the records. Examples include polygraph records from background investigation files at CBP, and personnel records and job search records at CBP and FEMA. These kinds of requests pose opportunities to enable requesters to ask for their records directly from human resources offices. Indeed, such discussions are underway at FEMA. First-party requests for equal opportunity records at ICE and internal investigation records at CBP, on the other hand, can generate large sets of responsive

records that contain a complex set of equities that require careful review and coordination with multiple offices. In these cases, moving these requests out of FOIA is not feasible unless another office demonstrates the capacity to manage these complicated document reviews in a timely manner.

3.7.2 DHS Privacy Office

DHS PRIV handles FOIA requests on behalf of most offices within Office of the Secretary²⁴ and the following operational and support components: the Cybersecurity and Infrastructure Security Agency, the Countering Weapons of Mass Destruction Office, the Office of Homeland Security Situational Awareness, the Science and Technology Directorate, and the Management Directorate, including the Federal Protective Service and, most notably, the Office of Biometric Identity Management. DHS PRIV operates one of the “big four” FOIA processing centers within DHS. In FY2023 only USCIS and CBP received and processed more FOIA requests than DHS PRIV. HSSEDI analyzed first-party FOIA requests for IDENT records. Further details are in Appendix E.1.

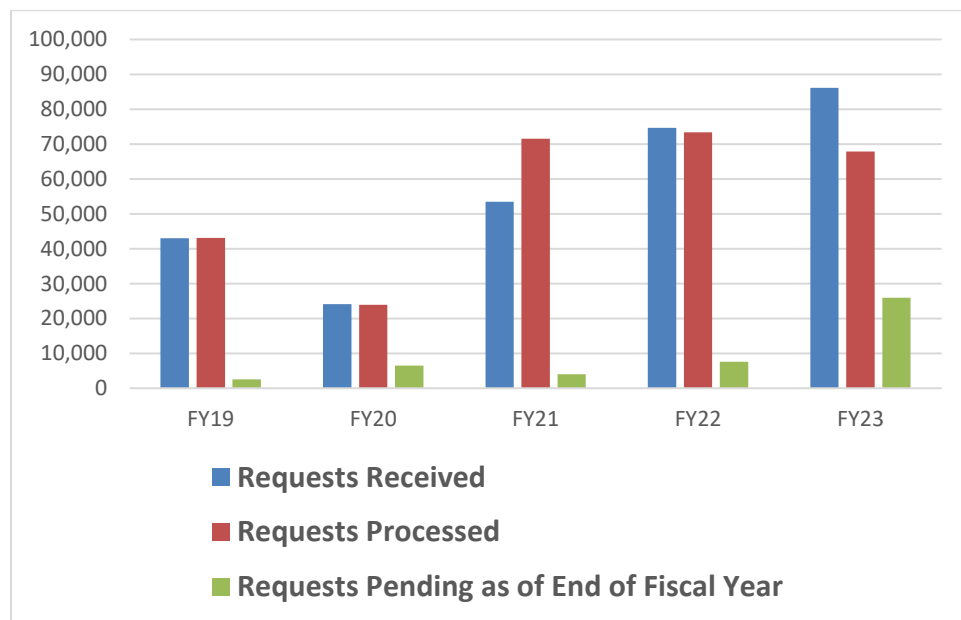


Figure 9. DHS PRIV FOIA Request Overview

3.7.2.1 IDENT Records

IDENT is the central DHS-wide repository for storing and processing biometric data. The system links biometrics with biographical information to establish and verify identities. The records support national security, law enforcement, immigration and border management, intelligence,

²⁴ These offices, in addition to the Privacy Office, are the Office of the Citizenship and Immigration Services Ombudsman; the Office of the Executive Secretary; the Office of the General Counsel; the Office of Legislative Affairs; the Office of the Military Advisor; the Office of Partnership and Engagement; the Office of Public Affairs; and the Office of Strategy, Policy, and Plans.

background investigations, and administrative uses. IDENT falls under the purview of OBIM, which is the steward of data stored, processed, and managed in IDENT.

DHS PRIV received just under 84,000 FOIA requests for IDENT records in FY2023, constituting over 97% of the FOIA requests DHS PRIV received that fiscal year. People making first-party requests for their IDENT records are typically seeking information about encounters and interactions with DHS components, such as the date and location of apprehensions. Many requesters are looking to confirm they have not had an encounter with DHS. Approximately 51% of DHS PRIV's responses to IDENT requests in FY2023 returned no responsive records.

The greatest challenge is in authenticating requesters and searching for responsive records. These two activities are multi-step, complicated processes involving the digitization of submitted fingerprint cards and searching and exporting data from multiple systems. Opportunities for improving the processing of requests for IDENT records are likely to be found in improving the requester verification process and searching for responsive records. Implementing a process that enables requesters to submit their requests digitally, while taking care to safeguard this data, could improve the efficiency of requester verification.

3.7.3 U.S. Citizenship and Immigration Services

The FOIA program at USCIS, managed by IRIS, receives and handles all FOIA requests directed to USCIS. As the agency that oversees lawful immigration to the United States, USCIS manages A-Files. Requests for these records constituted approximately 97% of USCIS FOIA requests in FY2023. USCIS consistently receives and processes more FOIA requests than any other DHS component. In fact, setting aside the rest of DHS, USCIS received and processed more FOIA requests than any other federal department or agency in FY2023. HSSEDI analyzed first-party FOIA requests for A-Files. Further details are in Appendix E.2.

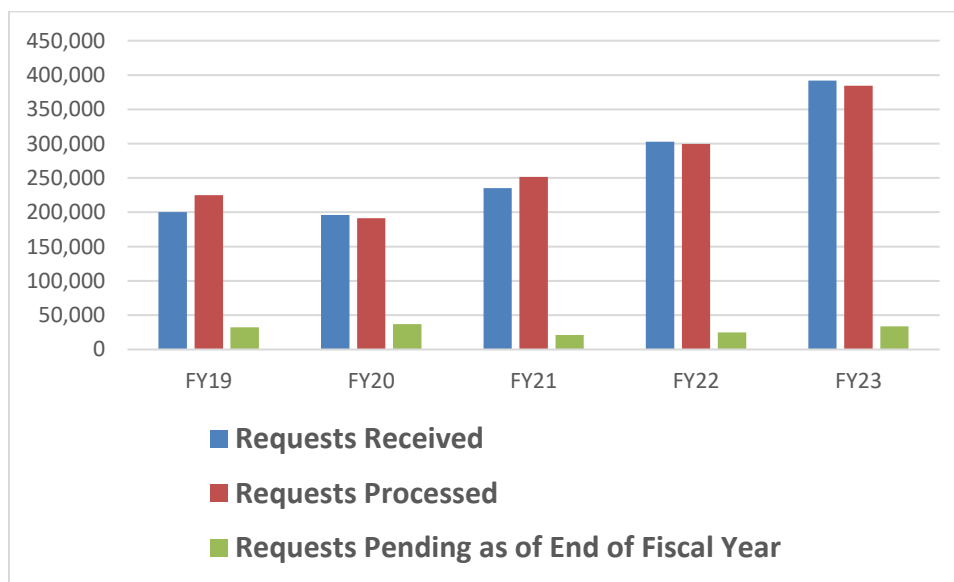


Figure 10. USCIS FOIA Request Overview

3.7.3.1 A-Files

A-Files document transactions of individuals interacting with the immigration process. Individuals are assigned an Alien Number and corresponding A-File that serves as the primary, unified official record of a person's immigration history. A-Files exist as either a paper A-File, an electronic A-File, or a combination of electronic and paper records and supporting documentation. A-Files are usually large, complex files containing approximately 250 to 300 pages. Some A-Files can contain thousands of pages of records. ICE and CBP often have significant equities in A-Files.

In FY2023 USCIS received approximately 381,000 FOIA requests for A-Files, representing 97% of all FOIA requests received by USCIS, 57% of requests received by DHS, and 32% of requests received by the entire federal government. Requests for A-Files grew approximately 30% in FY2023 over the previous fiscal year.

USCIS processes A-File FOIA requests in three tracks: Track One for simple requests for a specific document or limited set of records from an A-file, Track Two for requests seeking more than a few pages of documents and up to the entire A-File, and Track Three for requesters that have an upcoming scheduled immigration hearing. USCIS processes all its FOIA requests in FIRST. USCIS reported 376 full-time FOIA staff (full-time employees plus full-time equivalent employees) in FY2023—nearly all this staffing is in support of A-File requests. USCIS has Memorandums of Understanding (MOUs) with ICE and CBP on reviewing responsive A-File records with ICE and CBP equities.

Because of A-Files being the single most requested record type throughout FOIA, the crucial role that A-Files play in adjudicating peoples' immigration rights and status, and the Nightingale case, there have been multiple calls for USCIS to move A-File requests out of FOIA to an alternative means of access. However, the complex nature of the A-File, the investments made by USCIS in its FOIA processes, the specialized skills of the IRIS workforce, and USCIS's demonstrated ability to keep pace with A-File requests through FOIA since 2021 make it difficult to see how implementing an alternative means of access would improve the response to A-File requests or not cause significant disruption during the transition to a new process.

Opportunities for significantly improving USCIS's processing of A-File requests lie in changes to how A-Files are created and managed rather than changes to how A-File requests are processed. This includes continuing the full transition to digital recordkeeping and designing A-File documents and their recordkeeping systems to move closer to the goal of generating response-ready records.

3.7.4 Immigration and Customs Enforcement

ICE received over 44,000 FOIA requests in FY2023. In addition, ICE conducted equity reviews for approximately 95,000 USCIS FOIA requests for A-Files in the same fiscal year. HSSEDI analyzed first-party FOIA requests for ICE encounter records. Further details are in Appendix E.3.

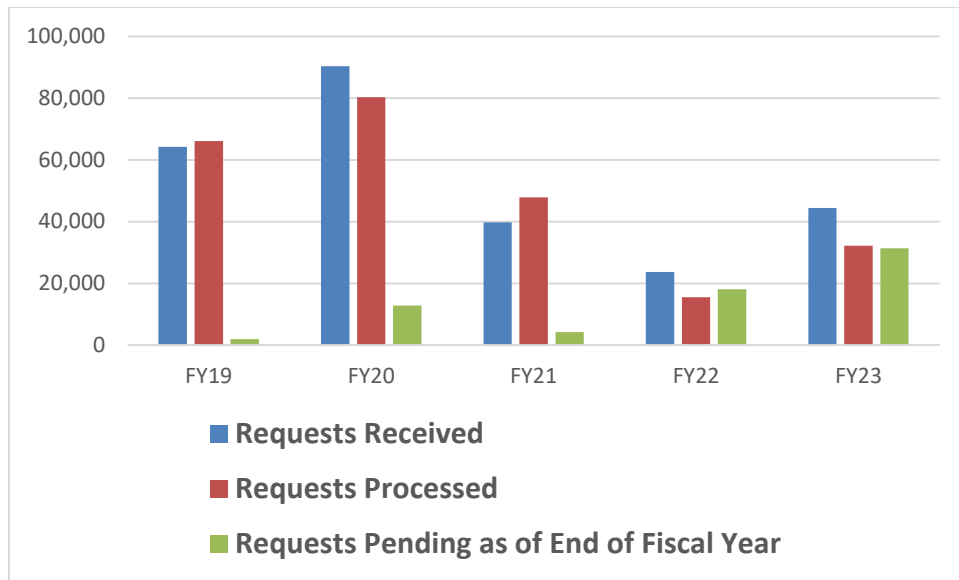


Figure 11. ICE FOIA Request Overview

3.7.4.1 Encounter Records

Encounter records encompass a broad array of records created by Enforcement and Removal Operations (ERO) and Homeland Security Investigations (HSI) that document encounters with individuals. These records are managed by ERO and HSI in a variety of recordkeeping systems. In response to first-party requests for these records, ICE typically provides case summaries, apprehension information, encounter information, dates detained, other custody and detainment information, and snapshot immigration histories. Over 90% of the FOIA requests that ICE received in FY2023 were first-party requests for encounter records. Encounter records are complex records with significant amounts of exempt information that require careful review. The FOIA program tasks the search for responsive encounter records to ERO and HSI. These search tasks can be laborious and compete with mission-focused priorities in ERO and HSI.

The nature of encounter records and the current challenges of processing the requests for these records do not suggest that moving the requests out of FOIA will readily improve ICE's processing of these requests. Most encounter records require careful exemption review, and ICE's FOIA program is the best-equipped office to manage this responsibility. There may be opportunities to explore generating exports of case summaries, apprehensions, and encounter locations and dates that meet requesters' needs. Even if ICE does not move requests out of FOIA, generating simplified outputs of responsive records could speed up FOIA processing. Shifting FOIA requests directly to ERO and/or HSI does not address their challenges in searching for responsive records. A key step in alleviating these challenges is accurately capturing the labor spent in ERO and HSI to conduct their FOIA work to more accurately capture the resources needed to meet ICE's growing FOIA demand.

3.7.5 Customs and Border Protection

CBP received over 144,000 FOIA requests in FY2023, trailing only USCIS for the most requests received within DHS. CBP manages its FOIA requests in five main processing tracks: traveler records, non-traveler records, incident-driven video recording systems and other video records,

significant requests, and requests under litigation. Traveler records constitute approximately 85% of CBP's FOIA requests, although the video, significant, and litigation requests are usually CBP's most time-consuming requests. First-party FOIA requests include requests for trusted traveler records that CBP processes within its non-traveler track and requests for apprehension records, passenger name records, and I-94 arrival/departure records, all processed by CBP in its traveler track. HSSEDI analyzed first-party FOIA requests for trusted traveler records, apprehension records, passenger name records, and I-94 records. Further details are in Appendices E.4 through E.7.

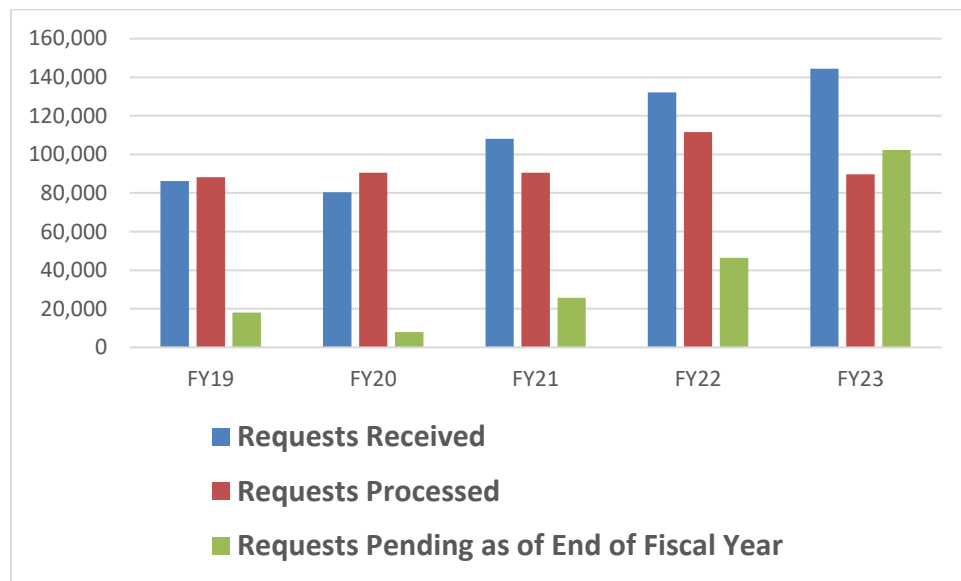


Figure 12. CBP FOIA Request Overview

3.7.5.1 Trusted Traveler Records

These records document individuals' enrollment in or rejection from CBP's Trusted Traveler Programs that provide expedited transit for pre-approved, low-risk international travelers. Some of these records contain complex exempt information that can be challenging to review. Merely lifting and shifting first-party requests for these records out of FOIA and into an alternative means of access is unlikely to produce better requester service. Opportunities for improvements are most likely to be found in examining the structure of these records and discovering opportunities to identify and exclude exempt information more easily.

3.7.5.2 Apprehension Records

These are a range of records that document CBP's encounters with and/or apprehensions of individuals who are not lawfully in the United States. These records are accessed through CBP's e3 Portal that references records in IDENT and ICE's Enforcement Integrated Database. Additionally, CBP accesses apprehension records through CBP's Analytic Framework for Intelligence. People making requests for these records are often looking for the date and location of apprehensions and encounters. Requests are often made by attorneys on behalf of their clients.

The large volume of requests is the core challenge with processing requests for apprehension records. CBP has seen a significant uptick in requests for apprehension records in FY2023 and FY2024. CBP uses bots to search for responsive records. This has significantly reduced the time it takes to conduct searches. Opportunities for implementing an alternative means of access or improving the processing of first-party requests for these records within FOIA most likely lie in developing methods to structure encounter records in a manner that would enable the export of targeted information sought by first-party requesters that requires minimal, if any, manual exemption review.

3.7.5.3 Passenger Name Records

These records are part of the advance passenger information CBP collects on all passengers and crew on air, rail, bus, and sea carriers entering the United States to identify high-risk individuals who may pose a threat to public safety or national security, or are ineligible to enter the country. Challenges to processing FOIA requests for these records include reviewing records and withholding exempt information. The processing of these requests might be a good opportunity to investigate solutions that leverage artificial intelligence to enhance the quality and speed of reviewers' identification and withholding of exempt information. These solutions could, for example, help reviewers more quickly identify names in responsive documents.

3.7.5.4 I-94 Arrival/Departure Records

CBP issues Form I-94 Arrival/Departure Record to non-immigrant non-citizens to provide them documentation of their approved length of admission to the United States as well as evidence of their departure from the country. CBP provides an online portal allowing travelers to the United States to retrieve some of these records and conduct other travel business. Although the I-94 online portal and mobile application have significantly reduced the number of FOIA requests for I-94-related records, CBP still receives a non-trivial volume of requests for arrival/departure records that are not available on the online portal. The I-94 online portal provides a good example of a DHS component establishing an alternative means of access for first-party records as well as enabling people to conduct other transactions, including checking the status of their stay and, in limited circumstances, applying for new I-94 forms. There are efforts within CBP to expand the scope of records people can access through the I-94 online portal, although these efforts are complicated by privacy and user authentication concerns.

3.7.6 Federal Emergency Management Agency

FEMA received 1,095 FOIA requests in FY2023. Although it is not one of the big four component FOIA processing centers at DHS, HSSDI included FEMA in this study because of the component's efforts to move requests for disaster assistance records out of FOIA. HSSDI analyzed first-party FOIA requests for disaster assistance records. Further details are in Appendix E.8.

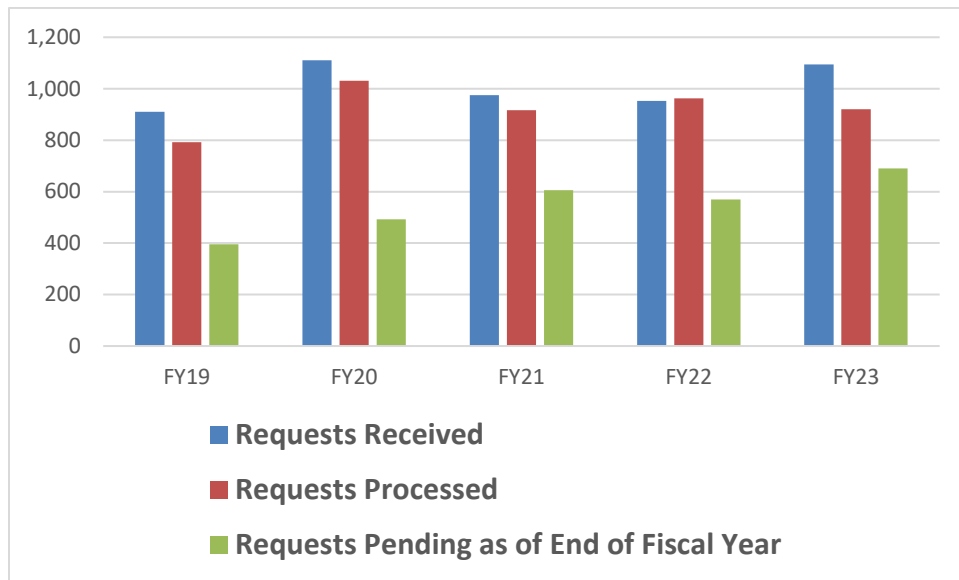


Figure 13. FEMA FOIA Request Overview

3.7.6.1 Disaster Assistance Records

Disaster assistance records comprise information and documents gathered and created in support of applications for financial and other tangible assistance from FEMA disaster assistance programs submitted by survivors of presidentially declared disasters or emergencies. The FOIA program receives approximately 100 to 150 first-party FOIA requests for these records, representing 10% to 15% of all FOIA requests received by FEMA. Requesters generally seek records documenting their assistance claims for a variety of reasons, usually in the context of needing help navigating the disaster assistance process.

Assistance programs are often better equipped than the FOIA program to help requesters with navigating the disaster assistance process. FEMA steers most requesters to forgo FOIA and directly contact program offices through call centers or disasterassistance.gov. This is part of the component's efforts to reach requesters early, deliver an improved customer service experience, and improve wait time for claims and claim files. Steering people to the FEMA tools and services that will best meet their needs is primarily a user experience challenge. Continued collaboration between the FOIA program and assistance programs on enhancing public-facing communication that directs people to the services that best meet their needs is the key to moving most of these requests out of FOIA and, most important, best serving disaster survivors.

Appendix A FOIA Advisory Committee Recommendations on First-Party FOIA Requests and FOIA Alternatives

The 2018-2020 and 2020-2022 terms of the FOIA Advisory Committee collectively made five recommendations about first-party requests. [26] [24] The 2020-2022 recommendations were developed from five recommendations from the First-Person FOIA Working Group of the Advisory Committee's Process Subcommittee. [63] See Table 9 for the Working Group's recommendations.

Table 8. FOIA Advisory Committee Recommendations on First-Party FOIA Requests and Alternatives

Number	Description	Status ²⁵	Action Taken
2020-14	OGIS and OIP will help agencies explore and consider alternative, more efficient ways for requesters to access records about themselves.	Completed	<ul style="list-style-type: none"> • OIP added the question about common categories of first-party requests to the CFO annual report. • OGIS published an assessment of commonly requested categories of first-party records.
2022-11	OIP will urge agencies to remove from first-person FOIA practice any records that agencies use to determine the individual's eligibility for benefits or affect an individual in proceedings.	Completed	<ul style="list-style-type: none"> • March 2022 Attorney General memo encourages agencies to examine possibility of implementing FOIA alternatives. • Agencies reported in their 2021, 2022, and 2023 CFO reports about exploring FOIA alternative means.
2022-12	Agencies should amend any regulations, directives, policies, and guidance to provide individuals, regardless of whether they have legal representation in agency proceedings, access to records about themselves.	In Progress	<ul style="list-style-type: none"> • March 2022 Attorney General memo encourages agencies to examine possibility of implementing FOIA alternatives. • Agencies reported in their 2021, 2022, and 2023 CFO reports about exploring FOIA alternative means.
2022-13	Agencies that receive first-person requests should identify the most commonly requested record and develop a plan for processing such records that leverages technology, and promotes efficiency and good customer service.	In Progress	<ul style="list-style-type: none"> • March 2022 Attorney General memo encourages agencies to examine possibility of implementing FOIA alternatives. • Agencies reported in their 2021, 2022, and 2023 CFO reports about exploring FOIA alternative means.

²⁵ During the 2022-2024 term the Implementation Subcommittee of the FOIA Advisory Committee is reviewing the status and outcomes of recommendations from previous Advisory Committee terms. See <https://www.archives.gov/ogis/foia-advisory-committee/2022-2024-term/subcommittees>.

Number	Description	Status ²⁵	Action Taken
2022-14	A comprehensive assessment of the DHS processes, workforce, and technology should be initiated as it relates to A-Files responsive to FOIA requests.	Pending	<ul style="list-style-type: none"> The Homeland Security Advisory Council recommended in March 2023 that DHS engage an internal component or a contractor to assess the agency's first-person requests and make recommendations for an alternative system.

**Table 9. First-Person FOIA Working Group, Process Subcommittee, 2020-2022 FOIA Advisory Committee
First-Party FOIA Recommendations**

Recommendation Number	Recommendation
Recommendation 1	Records relied on by any agency that affect eligibility for benefits or adversely affect an individual in proceedings should be made automatically available and not require first-person FOIA practice.
Recommendation 2	Record access should not discriminate against pro se parties.
Recommendation 3	Agencies should use technology to leverage their effort to make first-person agency records more easily accessible outside of FOIA.
Recommendation 4	Agencies that receive frequent first-person requests can benefit from identifying the most commonly requested records and developing processes for processing such records to promote efficiency and good customer service.
Recommendation 5	Other agencies that receive frequent first-person requests should consider the costs and benefits of moving to proactive systems for disclosure, such as those modeled by other agencies, such as the IRS and SSA.

Appendix B Homeland Security Advisory Council Recommendations on First-Party FOIA Requests and FOIA Alternatives

The Openness and Transparency DHS Review Subcommittee of the Homeland Security Advisory Council issued a March 2023 review that included five recommendations for DHS to improve its commitment to transparency and open government. [4] Several of these recommendations concern first-party FOIA requests and are highlighted in the table below. Recommendation 4, on establishing an alternative system for first-party requests, most directly applies to this analysis.

Table 10. Homeland Security Advisory Council Recommendations on First-Party FOIA and Alternatives

Recommendations	Sub-Recommendations
1. Increase Resources for Openness and Transparency	<ul style="list-style-type: none"> • The Department should request funding for the following areas most in need of additional resources: <ul style="list-style-type: none"> ○ Increased staffing to keep up with FOIA demand across components, targeted dynamically to the offices where the effect can be greatest and the components where the need is greatest ○ Developing a better, more current e-discovery system for FOIA and litigation
3. Use Data and Technology to Increase Transparency and Build Trust	<ul style="list-style-type: none"> • The Secretary should continue to prioritize and appropriately resource the digitization of A-Files for all new applications and for those applications currently in immigration proceedings. Specific attention should continue to be paid to tribal, rural, non-English speaking, and vulnerable communities to ensure equitable access to online information.
4. Establish an Alternative System for First-Person Records Request System	<ul style="list-style-type: none"> • DHS should establish an alternative system for making and responding to first-person requests in a more timely way than through FOIA for, at a minimum, records that affect an individual's eligibility for benefits or adversely affect an individual in proceedings. • The specific details of the alternative system will require thorough research and thoughtful design that is beyond the purview and expertise of the Subcommittee. DHS therefore should engage an appropriate expert (internal component or contractor) to assess DHS's first-person requests and make recommendations for the design and implementation of an alternative system. • DHS should seek funding from Congress for this transformation and commit internal time and resources to accomplish it.

Appendix C **Nightingale v. U.S. Citizenship & Immigration Services Summary**

This appendix summarizes *Nightingale v. USCIS* through the Court’s December 2020 summary judgment for the Plaintiffs. Discussion of USCIS and ICE’s ongoing efforts to comply with the judgment is in Section 3.7.3 and Appendix E.2.

In a class action suit against DHS, USCIS, and ICE, plaintiffs challenged the government’s failure to respond to their requests for A-Files within the statutory deadlines mandated by FOIA. [35] The agencies (known collectively as “Defendants”) serve as custodians of the A-Files, among other roles and responsibilities. Any delay in processing A-File FOIA requests could deprive the plaintiffs of the information they need to defend against removal, obtain benefits, and gain citizenship. [35, p. 1196]

Based on a previous ruling, two classes had been certified by the Court: [66]

USCIS Class: All individuals who filed, or will file, A-File FOIA requests with USCIS which have been pending, or will be pending, with USCIS for more than 30 business days without a determination.

ICE Referral Class: All individuals who filed, or will file, A-File FOIA requests with USCIS that USCIS has referred, or will refer, to ICE and which have been pending, or will be pending, for more than 30 business days from the date of the initial filing with USCIS without a determination.

After certification, the Plaintiffs moved for summary judgment and sought an order (1) declaring the government’s pattern or practice to be unlawful, (2) permanently enjoining the Defendants from violating FOIA, (3) ordering the elimination of existing backlogs within thirty (30) days, (4) requiring regular compliance reports to the court and class counsel, and (5) ordering the Defendants to provide notice and a uniform procedural mechanism that will ensure that class members in removal proceedings can request and receive A-Files in a timely manner. [67]

The Defendants cross-moved for summary judgment on the grounds that the Plaintiffs failed to establish a pattern or practice in their claim. [68] The Defendants further requested that even if the Court found that a pattern or practice had been established, the Court decline to enter injunctive relief given the effort that the Defendants had made to comply with FOIA deadlines and reduce backlog. [68]

Pattern or Practice Claims

As noted in Section 1.1, FOIA carries significant burdens for agencies with stringent deadlines that determine when requests must be processed and returned. The FOIA statute requires that an agency make a determination on a FOIA request within 20 business days. [69] An agency may extend its response time in case of “unusual circumstances,” by no more than 10 business days provided it sends the requester “written notice.” [70] In enacting the statute, Congress recognized the significance of timely conveyance of the information requested through FOIA. Congress stated, “[l]ong delays in access can mean no access at all,” and urged agencies to “respond to requests in a timely manner.” [71] The courts have echoed this sentiment in several cases,

stating, “[i]n adopting the FOIA, Congress was specifically concerned that agencies would delay in responding to requests, and as a result ‘an agency’s failure to comply with the FOIA’s time limits is, by itself, a violation of the FOIA.’”²⁶ [72, p. *7]

In establishing that the government had a pattern or practice of FOIA violations, the Court found that the Defendants had an “unmistakable history” of failing to make timely determinations on A-File FOIA requests. [35, pp. 1201-2] USCIS reported having a backlog for at least eight years prior to the Court’s ruling, a backlog that increased by over 9,000 requests from 2015 to 2020. [35, p. 1202] The Court recognized that the USCIS backlog surpassed facts seen in precedent where the courts found that a significant backlog was indicative of possible FOIA violations.²⁷ [35, p. 1201] Further, the Court found that the average processing time for a FOIA request exceeded the statutory maximum by more than double. [35, p. 1203]

The Defendants argued that “the backlogs fail to reflect the incredible volume of incoming A-File requests received since 2012 and their good faith efforts to address the problem.” [35, p. 1204] However, the Court notes that the 1996 amendments to the FOIA statute “tightened” the definition of “exceptional circumstances”: [35, p. 1205]

For purposes of this subparagraph, the term “exceptional circumstances” does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests. [73]

In this case, the Court found that the Defendants’ increase in workload was predictable and not “exceptional,” because (1) they had a backlog every year since at least 2012, (2) aggressive immigration enforcement policies made an increased workload predictable and expected, and (3) there has been no reasonable progress in reducing the backlog of pending requests. [35, pp. 1205-6]

Holding

Given the evidence before the Court and existing legal precedent, the Court entered summary judgment in favor of the Plaintiffs and ordered the following injunctive relief: [35, p. 1196]

- i. Defendants are permanently enjoined from further failing to adhere to FOIA statutory deadlines for adjudicating A-File FOIA requests;
- ii. Within sixty (60) days of Court’s order, defendants must make determinations on all A-File FOIA requests in USCIS’s and ICE’s backlogs;
- iii. Defendants must provide the court and class counsel with quarterly compliance reports, with the first report due within ninety (90) days of this order.

²⁶ Quoting *Gilmore v. U.S. Department of Energy*, 33 F. Supp. 2d 1184, 1187 (N.D. Cal. 1998). See also *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982), concluding that an agency’s unreasonable delay in disclosing non-exempt documents violates the FOIA and “courts have a duty to prevent these abuses.”

²⁷ Citing *Children’s Earth Found. v. National Marine Fisheries Services*, No. 14-1130 SC, 2015 WL 6331268 (N.D. Cal. Oct. 21, 2015).

Appendix D DHS Component Interview Outline

HSSEDI uses a structured set of questions to facilitate responses and discussion in interviews with staff from DHS components. These questions revolve around the types of records that people typically ask for in first-party FOIA requests, who are the requesters and what they are attempting to accomplish, the volume of requests, the staff levels devoted to responding to those requests, the frequency of appeals and litigation, and existing alternative methods for first-party requests.

Except for questions about FOIA-alternative systems, these questions apply to each record type identified in the first set of questions.

Table 11. Homeland Security Advisory Council Recommendations on First-Party FOIA and Alternatives

Topic Area	Questions
Record Type	What type of records are frequently asked for in first-party requests?
	Can you provide a description of each record type?
Requester Community	Who are the requesters?
	What are requesters trying to accomplish when asking for these records?
Request Volume	How many requests are received/processed per year?
	How is this data tracked?
Staffing	How many staff respond to requests for this record type?
	How is this data tracked?
Response Time	What is the median time to respond to requests for this record type?
	What is the size of the backlog (if any) for responding to requests for this record type?
	What is the primary reason for this backlog?
Appeals & Litigation	How many administrative appeals are received regarding requests for this record type?
	How many litigation cases are received regarding requests for this record type?
First-Party Alternatives	What types of first-party records are provided via FOIA-alternative systems?
	Were these records previously provided to first-party requesters via FOIA?
	When were these requests moved out of FOIA?
	What was the driver for moving these requests out of FOIA?
Overall	What works well with handling first-party requests for this record type inside of FOIA?

Topic Area	Questions
	What is your biggest challenge with handling first-party requests for this record type inside of FOIA?
	How has the implementation of SecureRelease affected the management of first-party FOIA requests?
	Any final overarching thoughts?

Appendix E DHS Component Record Type Analysis Details

This appendix provides assessment details of the first-party request types discussed in Section 3.7. These assessment details contain a description of the requested record type and list of relevant SORNs and PIAs; a discussion of processing FOIA requests for these records, including a review of request demand, the reasons people request these records, the level of effort to process these records, and challenges in processing these requests; and considerations for providing alternative means of access to these records.

E.1 DHS PRIV: IDENT Records

Summary

- **Description and Purpose**
 - IDENT is the central DHS-wide repository for storing and processing biometric data. The system links biometrics with biographical information to establish and verify identities. The records support national security, law enforcement, immigration and border management, intelligence, background investigations, and administrative uses.
 - IDENT falls under the purview of OBIM, which is the steward of data stored, processed, and managed in IDENT. OBIM is responsible for ensuring the proper management, use, sharing, retention, and disposition of IDENT data in coordination with IDENT data providers.
 - IDENT data contributors and users include CBP; ICE; USCG; USCIS; Department of State; Department of Defense; the intelligence community; DOJ and state and local law enforcement; federal, state, and local investigative agencies; and foreign partners.
 - Most IDENT records include biometric data, biographical data, and encounter data.
 - DHS is transitioning its storage and processing of biometric and biographical data from IDENT to the Homeland Advanced Recognition Technology System.
- **System of Record Notices**
 - DHS/USVISIT-004 DHS Automated Biometric Identification System (IDENT)
- **Privacy Impact Assessments**
 - DHS/OBIM/PIA-001 Automated Biometric Identification System (IDENT)
 - DHS/OBIM/PIA-004 Homeland Advanced Recognition Technology System (HART) Increment 1

FOIA Processing

- **Demand**
 - DHS PRIV received just under 84,000 FOIA requests for IDENT records in FY2023.
- **Requesters**

- First-party requesters are typically seeking information about encounters and interactions with DHS components, such as the date and location of apprehensions. Many requests are made by attorneys on behalf of clients.
- Many requesters are looking to confirm they have not had an encounter with DHS. Approximately 51% of DHS PRIV's responses to IDENT requests in FY2023 returned no responsive records.
- ***Level of Effort to Fulfill Requests***
 - DHS PRIV serves as the FOIA processing center for OBIM and is responsible for responding to first-party requests for IDENT records.
 - Approximately 25 to 30 DHS PRIV FOIA staff work on IDENT FOIA requests. Most of this staffing is dedicated to requester verification and search with a small portion completing the records review and request response work.
- ***Processing Challenges***
 - DHS PRIV processes FOIA requests for IDENT records in its complex track. Over 99% of responses with responsive records were partial grants/partial denials, with Exemptions 3 (statute), 6 (privacy), 7(C) (third-party privacy), and 7(E) (law enforcement techniques) being invoked. However, the main challenge in processing these requests is not in reviewing responsive records, as responsive IDENT records are typically only one to five pages long.
 - The greatest challenge is in authenticating requesters and searching for responsive records. These two activities are multi-step, complicated processes involving the digitization of submitted fingerprint cards and searching and exporting data from multiple systems.

Considerations for Alternative Means of Access

- Opportunities for improving the processing of requests for IDENT records are likely to be found in improving the requester verification process and searching for responsive records. Implementing a process that enables requesters to submit their requests digitally, while taking care to safeguard this data, could improve the efficiency of requester verification.

E.2 USCIS: Alien Files

Summary

- ***Description and Purpose***
 - A-Files document transactions of individuals interacting with the immigration process. Individuals are assigned an Alien Number and corresponding A-File, which serves as the primary, unified official record of a person's immigration history.
 - A-Files exist as either a paper A-File, an electronic A-File managed in the Enterprise Document Management System (EDMS) or USCIS Electronic Immigration System (USCIS ELIS), or a combination of electronic and paper records and supporting documentation. A-Files are usually large, complex files containing approximately 250 to 300 pages. Some A-Files can contain thousands of pages of records. A-Files are managed (1) on paper, (2) as electronic A-Files in EDMS and USCIS ELIS, (3) in the

Central Index System, (4) in the Microfilm Digitization Application System, and (5) in the National File Tracking System.

- USCIS is the custodian of A-Files. ICE and CBP often have significant equities in A-Files.
- Documents within an A-File can be unclassified, sensitive, for official use only, and classified.

- ***System of Record Notices***

- DHS/USCIS-ICE-CBP-001 Alien File, Index, and National File Tracking System of Records

- ***Privacy Impact Assessments***

- DHS/USCIS/PIA-009 Central Index System (CIS)
- DHS/USCIS/PIA-017 Microfilm Digitization Application System (MiDAS)
- DHS/USCIS/PIA-032 National File Tracking System (NFTS)
- DHS/USCIS/PIA-033 Immigration Benefit Background Check Systems PIA (IBBCS)
- DHS/USCIS/PIA-056 USCIS Electronic Immigration System (USCIS ELIS)

FOIA Processing

- ***Demand***

- In FY2023 USCIS received approximately 381,000 FOIA requests for A-Files, accounting for approximately 97% of all FOIA requests USCIS received during that fiscal year.²⁸ These A-File requests represent approximately 57% of all FOIA requests received by DHS and 32% of FOIA requests received by the federal government during FY2023.
- The volume of FOIA requests for A-Files is rising, growing approximately 30% over FY2022. USCIS received approximately 119,000 requests during the first quarter of FY2024.

- ***Requesters***

- Individuals usually request A-Files to support their application or appeal for benefits or gaining legal status. People also request their A-Files for immigration or removal hearings, or as part of their efforts to gain citizenship.

- ***Level of Effort to Fulfill Requests***

²⁸ These numbers are based on data from foia.gov and USCIS quarterly compliance reports mandated by the U.S. federal court in *Nightingale v. USCIS*. These quarterly reports typically run from September 15 to December 14, December 15 to March 14, March 14 to June 15, and June 15 to September 14. While not perfectly aligned to the fiscal year, these quarterly reports are sufficiently aligned for this analysis.

- USCIS processes A-File FOIA requests in three tracks: Track One for simple requests for a specific document or limited set of records from an A-File, Track Two for requests seeking more than a few pages of documents and up to the entire A-File, and Track Three for requesters that have an upcoming scheduled immigration hearing.
- USCIS processes all its FOIA requests in FIRST. This internally developed cloud-based solution is a successor to the FOIA/Privacy Action Information Protection System. FIRST includes a public-facing portal; request tracking and management capabilities; and document review, processing, and release preparation capabilities.
- USCIS reported 376 full-time FOIA staff (full-time employees plus full-time equivalent employees) in FY2023—nearly all this staffing is in support of A-File requests. USCIS uses contract support and leverages significant overtime—reporting at least 14,000 hours of overtime each quarter (three month reporting period) since September 2022. IRIS within USCIS manages the component’s FOIA program.
- USCIS has MOUs with ICE and CBP on reviewing responsive A-File records with ICE and CBP equities. Rather than make formal FOIA referrals to these components to review equities in responsive A-File records, these MOUs enable USCIS to review CBP equities and provide ICE FOIA staff access to FIRST where they can review ICE equities. These MOUs eliminate the laborious administrative process of generating and tracking FOIA referrals.

- ***Processing Challenges***

- *Request Volume:* As noted earlier, USCIS received approximately 381,000 FOIA requests for A-Files in FY2023 and is on pace to top 400,000 requests in FY2024. This growing volume includes unanticipated swings in requests, which are difficult to manage proactively.
- *A-File Complexity:*
 - *Size:* A-Files typically include hundreds of pages of records.
 - *Composition:* A-Files can be composed of a mix of paper and electronic records stored in multiple environments, including paper records stored at multiple field offices.
 - *Equities:* A-Files can contain equities from multiple agencies. Many A-File records contain law enforcement sensitive and third-party privacy information that must be exempted from release to the first-party requester. Responsive A-File records, particularly requests for full or substantial portions of A-Files, require careful review.
- *Court Order:* The U.S. federal court’s ruling in the Nightingale case permanently enjoins USCIS “from further failing to adhere to FOIA statutory deadlines for adjudicating A-File FOIA requests.” [35, p. 1196] The agency does not have the leeway to operate with a rolling backlog of A-File requests and remains obligated to report its compliance to the U.S. federal court on a quarterly basis.
- *Misdirected Requests:* USCIS continues to be burdened with redirecting misdirected requests and inquiries.

Considerations for Alternative Means of Access

- Because of A-Files being the single most requested record type throughout FOIA, the crucial role that A-Files play in adjudicating peoples' immigration rights and status, and the Nightingale case, there have been multiple calls, as highlighted in Section 3.1, for USCIS to move A-File requests out of FOIA to an alternative means of access.
- The nature of the A-File, the investments made by USCIS in its FOIA processes, and USCIS's demonstrated ability to keep pace with A-File requests through FOIA since 2021 makes it difficult to see how implementing an alternative means of access would improve the response to A-File requests or not cause significant disruption during the transition to a new process.
 - *The A-File:* As noted in its description, the A-File is a large complex record composed of a heterogeneous set of documents that require careful review to ensure that exempt content is not inappropriately released to requesters. A-Files do not lend themselves to automated release through self-service portals. At this juncture A-Files still require human-centered review before release to first-party requesters.
 - *Significant Investment in the FOIA Process:* USCIS and IRIS have invested significant resources in adding and training staff; developing and implementing FIRST and adopting an agile development process for continuously improving the tool; enabling online requesting and retrieval of records; implementing digitization processes for requested paper A-Files; continuously collecting data and analyzing metrics to continuously seek opportunities for process improvements, including looking for small changes that can have big impacts on efficiency; and fostering a culture of continuous improvement.
 - *Staff:* IRIS has the most capable staff for managing and conducting these FOIA requests. It has invested significant resources in hiring, onboarding, and training staff on FOIA processes and reviewing records for exemptions. IRIS has established processes and agreements to efficiently adjudicate ICE and CBP equities in responsive A-Files. Processing A-File requests is a core responsibility of IRIS staff, not another duty as assigned.
 - *Demonstrated Results:* Within 90 days of the December 2020 Nightingale decision, USCIS was able to reduce its A-File FOIA request backlog from almost 22,000 requests to under 600 requests. Since December 2022, USCIS has kept its request backlog to 10 or fewer requests at the conclusion of each quarterly reporting period. Over that same time, USCIS has kept its average response time for Track One requests to under 18 business days, under 21 days for Track Two requests, and under 9 days for Track Three requests.
- Opportunities for significantly improving USCIS processing of A-File requests lie in changes to how A-Files are created and managed rather than changes to how A-File requests are processed. This includes continuing the full transition to digital recordkeeping and designing A-File documents and their recordkeeping systems in a fashion that enables

the automated and semi-automated identification and withholding of exempted content—moving closer to the goal of generating response-ready records.

E.3 ICE: Encounter Records

Summary

- ***Description and Purpose***
 - Encounter records encompass a broad array of records created by ERO and HSI that document encounters with individuals. These are primarily electronic records but do include some paper records. These records are managed by ERO and HSI in a variety of recordkeeping systems.
 - In response to first-party requests for these records, ICE typically provides case summaries, apprehension information, encounter information, dates detained, other custody and detention information, and snapshot immigration histories.
 - This array of encounter records does not include ICE’s review of A-Files for ICE equities as part of USCIS processing of FOIA requests for these records. As noted in Appendix E.2, USCIS and ICE have an MOU that enables ICE FOIA staff to review A-File documents in FIRST for ICE equities without having to create formal FOIA referrals. ICE has two business days to complete these reviews. ICE’s FOIA team dedicates approximately seven FOIA full-time staff to this work—augmenting this staffing as needed. ICE reviewed approximately 95,000 A-File requests in FY2023.
- ***System of Record Notices***
 - DHS/ICE-007 Criminal History and Immigration Verification (CHIVE)
 - DHS/ICE-009 External Investigations
 - DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER)
 - DHS/ICE-012 Visa Security Program Records
 - DHS/ICE-016 FALCON Search and Analysis (FALCON-SA)
 - DHS/USCIS-002 Background Check Service
 - DHS/USCIS-007 Benefits Information System
 - DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records
- ***Privacy Impact Assessments***
 - DHS/ICE/PIA-015 Enforcement Integrated Database
 - DHS/ICE/PIA-020 Alien Criminal Response Information Management System (ACRIME) integrated with EAGLE/EID
 - DHS/ICE/PIA-032 FALCON Search and Analysis System (FALCON-SA)
 - DHS/ICE/PIA-033 FALCON Tipline (FALCON-TL)
 - DHS/ALL/PIA-041 One DHS Overlay Vetting Pilot PIA

- DHS/ICE/PIA-045 ICE Investigative Case Management (ICM)
- DHS/ICE/PIA-048 Data Analysis System (DAS)
- DHS/ICE/PIA-049 ICE Parole and Law Enforcement Programs Unit Case Management System
- DHS/ICE/PIA-051 Law Enforcement Information Sharing Service (LEIS Service)
- DHS/ICE/PIA-052 Visa Security Program – Pre-Adjudicated Threat Recognition Intelligence Operations Team (PATRIOT) Tracking System
- DHS/ICE/PIA-055 Repository for Analytics in a Virtualized Environment (RAVEN)
- DHS/ICE/PIA-063 ICE Noncitizen Portal

FOIA Processing

- ***Demand***

- Over 90% of the over 44,000 FOIA requests that ICE received in FY2023 were first-party requests for encounter records.

- ***Requesters***

- Individuals make first-party requests for encounter records to gather documentation on their encounters with ICE. Frequently, requesters are attorneys working on behalf of clients. They are commonly seeking records of their clients' entry and exit into and out of the country, entry screenings, and immigration history. Often attorneys make the same request to CBP and/or USCIS as part of their due diligence efforts to ensure they capture all relevant information for their clients.

- ***Level to Effort to Fulfill Requests***

- Essentially all ICE FOIA staff spend a substantial portion of their time responding to first-party FOIA requests for encounter records. ICE reported 47 full-time FOIA staff for FY2023. This does not include the time that HSI and ERO staff spend on coordinating requests and searching for and capturing responsive records.

- ***Processing Challenges***

- ICE's FOIA backlog has grown over the past two years, from under 4,000 backlogged requests at the close of FY2021, to under 17,000 requests at the close of FY2022, to over 28,000 requests at the close of FY2023. This is in the context of an 87% jump in the number of requests received in FY2023 over FY2022 and growing volume of USCIS A-File FOIA requests that require ICE equity review.
- The FOIA program tasks the search for responsive encounter records to ERO and HSI. These search taskers can be laborious and compete with mission-focused priorities in ERO and HSI.
- Of over 32,000 FOIA requests that ICE responded to in FY2023, almost 26% of these requests had a "no records" response. An additional 9% of requests came up with only relevant documents that were not agency records subject to FOIA. These responses

can be provided only after a substantial good-faith effort has been made in the search for responsive records.

- Of the almost 6,700 FY2023 FOIA responses that ICE returned that involved responsive records, over 90% were partial grants/partial denial responses. This indicates that most requests involve responsive records that contain exempt information that must be carefully identified and withheld. These are time-consuming reviews that require specialized knowledge.
- ICE receives a substantial number of misdirected or non-perfectable requests. Requests referred to other components or agencies, withdrawn requests, not reasonably described requests, duplicate requests, otherwise improper requests, and other reasons for requests being withdrawn constituted almost 45% of the requests that ICE closed in FY2023.
- ICE must ensure that requesters are providing the correct A-Number. Verification of requesters' identities more generally can be time-consuming.
- ICE has expressed a challenge in meeting the hiring demands needed to keep pace with its growing workload.

Considerations for Alternative Means of Access

- The nature of encounter records and the current challenges of processing the requests for these records do not suggest that moving these requests out of FOIA will readily improve ICE's processing of these requests.
 - Most encounter records require careful review for exempt information. ICE's FOIA program is the best-equipped office to manage these reviews at scale. Thus, these records do not lend themselves to direct request self-service through online portals or direct handling through program offices.
 - There may be opportunities to explore generating exports of case summaries, apprehensions, and encounter locations and dates that meet requesters' needs. Even if ICE does not move requests out of FOIA, generating simplified outputs of responsive records could speed up FOIA processing.
 - Shifting FOIA requests directly to ERO and/or HSI does not address their challenges in searching for responsive records. This kind of shift in responsibilities would likely exacerbate current challenges.
- There are challenges in executing searches for responsive records that are tasked out to ERO and HSI offices. A key first step to grappling with these challenges is accurately capturing the labor spent in ERO and HSI to conduct their FOIA work to more accurately capture the resources needed to meet ICE's growing FOIA demand.
- ICE receives a significant number of misdirected or otherwise non-perfectable requests and spends substantial time dealing with this "noise." It may be beneficial to review requesters' user experiences to identify possible changes to ICE public-facing touch-points or outreach activities to reduce the volume of these requests.

E.4 CBP: Trusted Traveler Programs Records

Summary

- ***Description and Purpose***
 - CBP's Trusted Traveler Programs—Global Entry, TSA PreCheck, NEXUS, SENTRI, Free And Secure Trade—provide expedited transit for pre-approved, low-risk international travelers through specific U.S. border ports of entry.
 - These records document individuals' enrollment in or rejection from these programs.
- ***System of Record Notices***
 - DHS/CBP-002 Global Enrollment System
 - DHS/CBP-007 Border Crossing Information
 - DHS/CBP-006 Automated Targeting System
 - DHS/CBP-011 U.S. Customs and Border Protection TECS
- ***Privacy Impact Assessments***
 - DHS/CBP/PIA-002 Global Enrollment System (GES)

FOIA Processing

- ***Demand***
 - CBP received approximately 7,000 requests for Trusted Traveler Programs records in FY2023, which represents approximately 5% of FOIA requests received by CBP that fiscal year. CBP processes requests for these records, among other types of records, in its non-traveler records track.
- ***Requesters***
 - Requesters usually make first-party requests for these records to determine why their application for a Trusted Traveler Program was denied or revoked.²⁹
- ***Level of Effort to Fulfill Requests***
 - Responsive records usually require careful review because of a complex array of exempt content representing multiple equities in the records. CBP does have agreements in place that allow it to address the equities without having to create a formal FOIA referral.
 - Most sets of responsive records contain over 20 pages.
 - CBP processes first-party FOIA requests for these records as part of its non-traveler FOIA processing track.

²⁹ People who are denied or revoked from a Trusted Traveler Program can contact the CBP's ombudsman to have the agency reconsider their case.

- ***Processing Challenges***

- The complexity of reviewing these records for exempt information and accounting for all equities is the most significant challenge for managing FOIA requests for trusted traveler records.

Considerations for Alternative Means of Access

- Due to the complexity of Trusted Traveler Programs records, merely lifting and shifting first-party requests out of FOIA and into an alternative means of access is unlikely to produce better requester service. Opportunities for improvements are most likely to be found in examining the structure of these records and discovering opportunities to identify and exclude exempt information more easily.

E.5 CBP: Apprehension Records

Summary

- ***Description and Purpose***

- These are a range of records that document CBP's encounters with and/or apprehensions—including physical control or temporary detainment—of individuals who are not lawfully in the United States.
- These records are accessed through CBP's e3 Portal that references records in IDENT and ICE's Enforcement Integrated Database. Additionally, CBP accesses apprehension records through CBP's Analytic Framework for Intelligence.

- ***System of Record Notices***

- DHS/CBP-023 Border Patrol Enforcement Records System of Records (BPER)

- ***Privacy Impact Assessments***

- DHS/CBP/PIA-010 Analytical Framework for Intelligence (AFI)
- DHS/CBP/PIA-012 CBP Portal (e3) to EID/IDENT

FOIA Processing

- ***Demand***

- CBP processes requests for these records, among other types of records, in its traveler records track. Requests in this track are approximately 85% of CBP's FOIA requests. Requests for apprehension records represent a significant portion of requests in the traveler records track.

- ***Requesters***

- People making requests for these records are often looking for the date and location of apprehensions and encounters. People seek this information for a variety of reasons, including in support of their defense in hearings and other legal proceedings or overcoming bans from entering the United States.
- Requests are often made by attorneys on behalf of clients. Often attorneys will make batches of requests for multiple clients.

- ***Level of Effort to Fulfill Requests***

- CBP processes requests for apprehension records as complex FOIA requests.
- CBP uses bots to search for responsive records. This has significantly reduced the time it takes to conduct searches.
- Responsive records are typically two to eight pages long. Responsive records usually contain exempt information. Identifying and withholding this information is a comparatively straightforward task.

- ***Processing Challenges***

- The large volume of requests is the core challenge with processing requests for apprehension records.
- CBP has seen a significant uptick in requests for apprehension records in FY2023 and FY2024.

Considerations for Alternative Means of Access

- Opportunities for implementing an alternative means of access or improving the processing of first-party requests for these records within FOIA would most likely be found in developing methods to structure encounter records in a manner that would enable the export of targeted information sought by first-party requesters that requires minimal, if any, manual exemption review. Because of the volume of requests for these records, even small improvements to the request process could have significant impacts on CBP's overall performance in responding to these requests.

E.6 CBP: Passenger Name Records

Summary

- ***Description and Purpose***

- These records are part of the advance passenger information CBP collects on all passengers and crew on air, rail, bus, and sea carriers entering the United States to identify high-risk individuals who may pose a threat to public safety or national security, or are ineligible to enter the country.
- An individual's passenger name record is typically two or more pages but can extend to close to 100 pages.

- ***System of Record Notices***

- DHS/CBP-005 Advance Passenger Information System

- ***Privacy Impact Assessments***

- DHS/CBP/PIA-001 series Advance Passenger Information System

FOIA Processing

- ***Demand***

- CBP processes requests for these records, among other types of records, in its traveler records track. Requests in this track are approximately 85% of CBP's FOIA requests.
- ***Requesters***
 - Requesters appear to seek these records for a variety of reasons.
- ***Level of Effort to Fulfill Requests***
 - CBP processes requests for these records as complex requests. The complexity of reviewing these records for exemptions varies. Some records have a minimal amount of exempt information. Other records contain information about other travelers, especially travel companions, that must be laboriously identified and exempted.
- ***Processing Challenges***
 - Challenges include reviewing records and withholding exempt information.

Considerations for Alternative Means of Access

- The processing of these requests might be a good opportunity to investigate solutions that leverage artificial intelligence to enhance the quality and speed of reviewers' identification and withholding of exempt information. These solutions could, for example, help reviewers more quickly identify names in responsive documents. Payoffs in investments such as this would likely require enhancing the review process of a broader array of request types beyond just requests for passenger name records. Evaluating how well these solutions can enhance reviews of passenger name records, however, might be a useful test for judging the merits of this kind of investment.

E.7 CBP: I-94 Records

Summary

- ***Description and Purpose***
 - CBP issues Form I-94 Arrival/Departure Record to non-immigrant non-citizens to provide them documentation of their approved length of admission to the United States as well as evidence of their departure from the country.
 - CBP provides an online portal allowing travelers to the U.S. to retrieve some of these records and conduct other travel business (<https://i94.cbp.dhs.gov/I94/#/home>). This includes retrieving one's most recent I-94 form to prove legal visitor status, retrieve arrival and departure history for the past 10 years, look up how much longer one can stay in the U.S., and pre-apply for a new I-94 for people entering the country via land borders and some ferry routes.
 - The CBP One I-94 form provides a mobile application version of the I-94 web portal.
- ***System of Record Notices***
 - DHS/CBP-016 Nonimmigrant Information System
- ***Privacy Impact Assessments***
 - DHS/CBP/PIA-016 I-94 Website Application

FOIA Processing

- ***Demand***
 - Although the I-94 online portal and mobile application have significantly reduced the number of FOIA requests for I-94-related records, CBP still receives a non-trivial volume of requests for arrival/departure records that are not available on the online portal.
- ***Requesters***
 - People usually make FOIA requests for arrival/departure records to retrieve their travel histories.
- ***Level of Effort to Fulfill Requests***
 - CBP processes requests for these records, among other types of records, in its traveler records track. Requests in this track are approximately 85% of CBP's FOIA requests.
- ***Processing Challenges***
 - Verifying requesters' identities.
 - Reviewing records for exempt information.

Considerations for Alternative Means of Access

- The I-94 online portal provides a good example of a DHS component establishing an alternative means of access for first-party records as well as enabling people to conduct other transactions, including checking the status of their stay and, in limited circumstances, apply for new I-94 forms.
- There are efforts within CBP to expand the scope of records people can access through the I-94 online portal, although these efforts are complicated by privacy and user authentication concerns.

E.8 FEMA: Disaster Assistance Records

Summary

- ***Description and Purpose***
 - Disaster assistance records comprise information and documents gathered and created in support of applications for financial and other tangible assistance from FEMA disaster assistance programs submitted by survivors of presidentially declared disasters or emergencies. Assistance can support repairing homes or replacing belongings, for example. These records are a combination of structured data and unstructured data (letters and correspondence). Individual disaster assistance files are primarily electronic but can include paper records. In addition to a variety of information submitted by claimants, these records include information collected from partner agencies, third parties, and FEMA staff, and data generated by FEMA systems.

- Individual assistance programs under the Office of Response and Recovery are the primary recordkeepers of disaster assistance records.
- ***System of Record Notices***
 - DHS/FEMA-008 Disaster Recovery Assistance Files
 - DHS/FEMA-016 FEMA-administered Disaster Case Management Files System of Records Notice
- ***Privacy Impact Assessments***
 - DHS/FEMA/PIA-049 Individual Assistance (IA) Program
 - DHS/FEMA/PIA-056 Administered Disaster Case Management Program

FOIA Processing

- ***Demand***
 - 10% to 15% of FEMA’s incoming FOIA requests are for first-party disaster assistance records. With FEMA averaging just over 1,000 FOIA requests per year during the past five years, this is approximately 100 to 150 first-party FOIA requests for disaster assistance records per year.
- ***Requesters***
 - Requesters generally seek the records documenting their assistance claims for a variety of reasons, including to replace their original copy of their claim file, provide documentation to their insurance company, gather evidence that they made a claim and document the government’s response to the claim, or gain access to a claim file submitted by a family member. Frequently people make these requests for records in the context of needing help navigating the disaster assistance process.
- ***Level of Effort to Fulfill Requests***
 - FOIA requests for disaster assistance files are processed within 20 business days on average. The most time-consuming aspect of this process is working with requesters to get proper proof of identity. First-party FOIA requests for these records that do not include proper identity verification are treated as third-party FOIA requests.
- ***Processing Challenges***
 - Requesters verifying their identity.
 - Requesters that have not previously contacted the claim program.
 - Requesters need broader assistance navigating the claims process beyond merely retrieving records.

Considerations for Alternative Means of Access

- Because requesters are often seeking help navigating the disaster assistance process, it is generally beneficial for people to make their request for records directly to the disaster assistance programs. Assistance programs are usually better equipped than the FOIA program to help requesters. FEMA steers most requesters to forgo FOIA and directly contact program offices through call centers or disasterassistance.gov. This is part of the

component's efforts to reach requesters early, deliver an improved customer service experience, and improve wait time for claims and claim files.

- Disasterassistance.gov is an online portal through which individuals can obtain their own claim files provided they have their registration ID and claim number. Not all requesters are aware of this self-service option.
- In addition to the online portal and the call center, people receive a paper copy of their completed FEMA Form 009-0-1 as part of a mail-out package, people can request records in person at a Disaster Recovery Center, or they can make a Privacy Act request.
- The disaster assistance files requested through FOIA are associated with less than 1% of all FEMA disaster assistance claims.

Appendix F About the First-Party FOIA-Alternative Evaluation Framework

The final assessment is supplemented by the First-Party FOIA-Alternative Evaluation Framework, a set of processes for analyzing the characteristics of specific types of first-party FOIA requests to assess the feasibility of moving those requests to an alternative means of access. This framework enables FOIA programs to estimate the resource and process impact of transitioning first-party FOIA requests to an alternative means of access or the impact of changing processes within the FOIA program. The framework focuses on four areas of analysis:

1. **Responsive Records:** A framework to analyze frequently requested first-party records and the work necessary to respond to requests for these records.
2. **User (Requester) Experience Analysis:** A framework to understand first-party requesters, what they are trying to accomplish, and what actions they must take to get the records or information they seek, and the experiences they have making first-party requests. This includes an outline of processes for conducting user studies.
3. **Statutory and Regulatory Analysis:** A framework to analyze the laws and regulations that provide people with the right to access government records containing information about themselves.
4. **Process and Capacity Analysis:** A framework for modeling the impact of “what if” scenarios on resources, processes, and processing throughput. This tool is derived from the FOIA Reference Model.³⁰ [8]

DHS FOIA processing centers already do at least some of these analyses with varying degrees of formality. Developing budget requests for staffing and other resources, processing procedures, and backlog reduction plans, for example, all involve some kind of process and capacity analysis. Additionally, DHS PRIV and components hold a variety of engagements with requester communities and gain insights on requester needs and experiences. For example, DHS PRIV has facilitated discussions between USCIS and immigration organizations about attorneys’ experiences requesting immigration records for their clients. [74, p. 14]

³⁰ This generalized model of the FOIA process was developed as part of an internally funded MITRE research project and was informed by the Chief FOIA Officer Council, Technology Committee, FOIA Reference Model Working Group, [91] which published an April 2023 white paper about the model. [80] The FOIA Reference Model is designed to be a detailed model of the FOIA process, yet flexible enough to accommodate variations in the way each agency processes its FOIA requests.

List of Acronyms

Acronym	Definition
ACIS	Automated Case Information System
A-Files	Alien Files
CBP	Customs and Border Protection
CFO	Chief FOIA Officer
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
DHS OIG	Department of Homeland Security Office of Inspector General
DHS PRIV	Department of Homeland Security Privacy Office
DOJ	Department of Justice
ECAS	EOIR Courts and Appeals System
EDMS	Enterprise Document Management System
EID	Enforcement Integrated Database
EOIR	Executive Office of Immigration Review
EPA	Environmental Protection Agency
ERO	Enforcement and Removal Operations
ESTTA	Electronic System for Trademark Trials and Appeals
FBI	Federal Bureau of Investigation
FEMA	Federal Emergency Management Agency
FFRDC	Federally Funded Research and Development Center
FIPPs	Fair Information Practice Principles
FIRST	FOIA Immigration Records System
FOIA	Freedom of Information Act
FY	Fiscal Year
GAO	U.S. Government Accountability Office

Acronym	Definition
HHS	Department of Health and Human Services
HR	Human Resources
HSI	Homeland Security Investigations
HSSEDI	Homeland Security Systems Engineering & Development Institute
ICE	Immigration and Customs Enforcement
IDENT	Automated Biometric Identification System
IRIS	Immigration Records and Identity Services
IRS	Internal Revenue Service
IT	Information Technology
MOU	Memorandum of Understanding
NARA	National Archives and Records Administration
NPRC	National Personnel Records Center
OBIM	Office of Biometric Identity Management
OGIS	Office of Government Information Services
OIP	Office of Information Policy
OMB	Office of Management and Budget
ORR	Office of Refugee Resettlement
PANOPTIC	Pattern and Action Nomenclature of Privacy Threats in Context
PIA	Privacy Impact Assessment
PII	Personally Identifiable Information
P-TACTS	Patent Trial and Appeal Case Tracking System
ROP	Record of Proceeding
SORN	System of Record Notice
SSA	Social Security Administration
UERM	Universal Electronic Records Management
U.S.C.	United States Code

Acronym	Definition
USCIS	United States Citizenship and Immigration Services
USCIS ELIS	USCIS Electronic Immigration System
VA	Department of Veterans Affairs

Glossary

Glossary Term	Glossary Definition
Alien Files (A-Files)	Records created for aliens (noncitizens—both immigrants and non-immigrants) to document their interaction with USCIS, CBP, and ICE as well as petitions and/or applications filed by or on behalf of the individual.
Alien Registration Number (A-Number)	“A unique seven-, eight-, or nine-digit number assigned to a noncitizen by DHS.” [75]
Alternative Means of Access	A process other than FOIA by which people can make a first-party request to an agency for records that contain information about themselves. The terms “FOIA alternative” and “FOIA-alternative process” are synonymous with “alternative means of access” in this assessment report.
First-Party FOIA Requests	An individual (or a counsel, advocate, guardian, or family member acting on a person’s behalf) making a FOIA request for records about themselves from a federal government agency for a private right of action, benefit, or other activity, where the requester usually must provide documentation that verifies their identity to receive the records they seek. The term “first-person FOIA request” is frequently used in the FOIA literature and should be considered a synonymous term in this assessment.
Privacy Impact Assessment	A “decision tool to identify and mitigate privacy risks that notifies the public what Personally Identifiable Information (PII) DHS is collecting, why the PII is being collected and how the PII will be collected, used, accessed, shared, safeguarded, and stored.” [76]
Record	This assessment report uses the FOIA definition of record: “(A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and (B) any information described under subparagraph (A) that is maintained for an agency by an entity under Government contract, for the purposes of records management.” [77]
Recordkeeping System	In this assessment report, the term “recordkeeping system” encompasses the federal government’s definition of recordkeeping system, “a manual or electronic system that captures, organizes, and categorizes records to facilitate their preservation, retrieval, use, and disposition,” and information system, “the organized collection, processing, transmission, and dissemination of information in accordance with defined procedures, whether automated or manual.” [78]

Glossary Term	Glossary Definition
System of Record	Any recordkeeping system for which an agency must issue a System of Record Notice as mandated by the Privacy Act. This assessment assumes that all systems of record are a recordkeeping system but that not all recordkeeping systems are a system of record.
System of Record Notice (SORN)	“Identifies the system of records, the purpose(s) of the system, the authority for maintenance of the records, the categories of records maintained in the system, the categories of individuals about whom records are maintained, the routine uses to which the records are subject, and additional details about the system.” [79] SORNs are published in the Federal Register.
Third-Party FOIA Requests	An individual making a FOIA request for records from a federal agency about the decisions, actions, and processes of that agency that do not require the requester to verify their identity. “Third-party FOIA requests” are sometimes referred to as “traditional FOIA requests.” In the FOIA literature “third-party FOIA requests” sometimes refers to a counsel, advocate, guardian, or family member making a first-party FOIA request on a person’s behalf.

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