

February 28, 2014

Recommendations of the Center for Effective Government for the Department of Justice's 2014 Open Government Plan

The Center for Effective Government welcomes the opportunity to offer suggestions for the Department of Justice's 2014 open government plan.

Enhance the Department's Government-wide FOIA Activities

Align the department's FOIA litigation stance with the administration's FOIA policies:

The Justice Department should direct agencies to take all reasonable steps to avoid litigation under the Freedom of Information Act (FOIA), including utilizing alternative dispute resolution and adopting best practices in working with requesters. When FOIA cases do come to court, agency lawyers should argue positions consistent with the president's and the attorney general's transparency principles. The department should also consider conducting a FOIA litigation review, similar to the one ordered by Attorney General Reno, to identify pending FOIA cases that the department should settle.

Add historical data to FOIA.gov: Currently, FOIA.gov includes reported data on agencies' FOIA performance dating back to fiscal year 2008. However, consistent agency reporting began in FY 1998. Adding complete historical data to FOIA.gov would make the site a comprehensive resource for research on FOIA performance.

Strengthen the Department's Implementation of FOIA

Improve FOIA processing: We encourage the department to seek to improve its performance at processing FOIA requests, particularly on the following measures:

- Percentage of simple requests responded to within 20 days
- Percentage of all requests (simple, complex, and expedited) responded to within 20 days
- Size of request backlog
- Percentage of requests for expedited processing adjudicated within 10 days
- Percentage of requests fully granted
- Average days to respond to appeals
- Percentage of appeals reversed



To improve performance on these measures, we encourage the department to consider whether the following steps may be helpful:

- Increasing proactive disclosure to reduce incoming requests
- Streamlining workflows to speed up communications between FOIA personnel and agency program staff or staff in other agencies
- Applying more efficient technology, such as software that allows electronic review, redaction, and release of documents
- Increasing personnel to process backlogs, using temporary assignments or contractors
- Improving use of multi-tracking procedures to ensure that expedited and simple requests are processed quickly while continuing to make progress on more complex requests
- Reviewing regulations, guidance, and training to ensure they appropriately encourage the maximum disclosure of information
- Using discretion to seek common ground with requesters who appeal

Ensure components frequently update their FOIA libraries: Posting documents in FOIA libraries is an important way to improve public access to information. All DOJ components should frequently add records to their FOIA libraries. For instance, the Bureau of Prisons' FOIA libraries lists its last update as June 2010. We suggest that the department remind components that they should update their FOIA libraries frequently, *e.g.* monthly, and share best practices to assist components in doing so.

Expand the Department's Use of E-filing

The department should commit to expanding the use of digital forms and data collection. Collecting information in electronic formats allows the department to disclose such information online more easily and quickly, and it improves the utility of disclosures for the public.

One way the department could identify opportunities to expand the use of e-filing would be to conduct a review of its current and proposed information collections under the Paperwork Reduction Act. According to reginfo.gov, the department has approximately 250 such information collections at the moment, which must be renewed at least every three years per 44 U.S.C. § 3507(g). This review could evaluate whether the department has any information collections where it would be appropriate to introduce or expand e-filing. Such a review would ensure that the department's information collections comply with the requirements under OMB Memorandum 13-13 that "agencies must design new information collection and creation efforts so that the information collected or created supports downstream interoperability between information systems and dissemination of information to the public" and the requirement under 44 U.S.C. § 3506(c)(3)(J) to certify that each information collection "to the maximum extent

practicable, uses information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.”

Resume the Practice of Publishing Open Government Self-Assessments

Throughout 2011, the Department of Justice published open government self-assessments. These assessments tracked the department’s open government progress, with links to completed projects, toward achieving the goals put forward in its open government plan. However, these updates ended in November 2011. The department should reinstate this practice. Doing so provides valuable updates to the public on the department’s progress and encourages accountability for the components in meeting their goals. They also simplify trying to assess the department’s achievements on its open government goals. We encourage the department to commit to publish such updates at least quarterly.

Conclusion

The Center for Effective Government appreciates the opportunity to offer suggestions for the Department of Justice’s 2014 open government plan. We hope you take our recommendations into consideration. If you have questions about our comments or want to discuss the issues further, please feel free to contact us.

Sincerely,

A handwritten signature in black ink that reads "Gavin R. Baker". The signature is written in a cursive, slightly slanted style.

Gavin R. Baker

Open Government Policy Analyst