



## FREEDOM OF INFORMATION ACT PERFORMANCE, 2012

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*Agencies Are Processing More Requests but  
Redacting More Often*



Center for  
**EFFECTIVE  
GOVERNMENT**

*Formerly OMB Watch*

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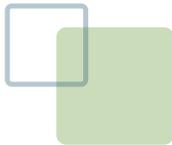
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# EXECUTIVE SUMMARY

A building block of American democracy is the idea that citizens have a right to information about how their government works and what it does in their name. However, citizen access to public information was only established by law in 1966 with the passage of the Freedom of Information Act (FOIA). The law has since been strengthened and improved over the years, and FOIA currently requires federal agencies to formally respond to requests for information within 20 working days or potentially face a lawsuit. While there are exemptions that agencies can use to avoid the disclosure of sensitive information or information that violates privacy rights, agencies processed over half a million FOIA requests in 2012. In about 41 percent of these cases, the information requested was released “in full” with no parts “redacted” – i.e., clean, complete documents with no blacked-out parts were provided to the person who requested the information.

How does this compare to past years and past administrations? How well has President Obama met his goal of being the most transparent administration in history with regard to access to public information?<sup>1</sup> This report examines the processing of FOIA requests from 25 major federal agencies in 2012 and reviews the processing of FOIA requests by agencies since 1998.<sup>2</sup>

## *Requests Rose and Processing Improved*

Overall, requests for public information peaked in the last years of the Clinton administration, fell steadily during the Bush administration, and began to rise in the first term of the Obama administration. Agencies received 11,000 *more* requests in 2012 than in 2011, and yet processed 39,000 more requests than in 2011; more than 512,000 FOIA requests were processed in 2012.

## *Unprocessed Requests Declined and Backlogs Were Reduced*

“Pending” requests (unprocessed requests) peaked in 2006 and have since fallen. While the

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1 Macon Phillips, “Change has come to WhiteHouse.gov,” The White House, Jan. 20, 2009. [http://www.whitehouse.gov/blog/change\\_has\\_come\\_to\\_whitehouse-gov](http://www.whitehouse.gov/blog/change_has_come_to_whitehouse-gov).

2 All cabinet agencies except Health and Human Services and Veterans Affairs are included. These two agencies were excluded because privacy issues around health records made them unsuitable for comparison with other agencies. Some smaller agencies were also excluded. In 2003, multiple agencies were combined into the Department of Homeland Security, so some parts of the analysis are only shown for this period.

Obama administration has higher processing rates than the Bush administration, the Clinton administration had higher request levels and fewer unprocessed requests than either of the subsequent administrations. The Obama administration has made steady process in reducing the number of unprocessed requests during its time in office, however.

Nearly 12,000 fewer requests were pending at the end of 2012 – a 12 percent decline from 2011. The bulk of the change can be attributed to a single department, the Department of Homeland Security (DHS). DHS receives far more requests than the other 24 federal agencies examined, and the number of requests it received continued to grow in 2012. However, because DHS processed more than enough requests to compensate, its backlog fell by 30 percent between 2011 and 2012.

At the end of 2009, President Obama ordered the heads of federal agencies to reduce their backlog of FOIA requests by 10 percent per year. Of the 11 agencies with significant backlogs, only two met the percent reduction goal each year: the Departments of the Interior and the Treasury. Two agencies, the Central Intelligence Agency and the National Archives and Records Administration, failed to meet the backlog reduction goal in all three years. (Denying a request for information counts as processing the request.)

## *Fewer Releases Include All the Information Requested*

Although the number of unprocessed requests has declined, the use of partial releases increased in 2012. Partial releases began increasing during the Bush administration, and the Obama administration has not reduced the practice. In fact, between 2008 and 2012, the percentage of FOIA requests that were partially granted grew by almost seven percent to nearly 54 percent. Because outright denials were infrequent, the increase in partial releases resulted in a decline in the release of full documents. The percentage of fully granted FOIA requests rose in 2010 but dipped in 2011 and fell further in 2012 to the lowest level on record – just under 41 percent of FOIA requests processed provided full and complete information to the requester.

## *Exemptions Were Used to Withhold Records More Often*

In 2012, agencies claimed exemptions significantly more often than in the previous year. Three categories accounted for over 70 percent of all exemptions: personal privacy, law enforcement personal privacy, and law enforcement techniques for prosecution. Each was used about 100,000 times in 2012.

The use of the internal rules exemption, once among the highest-used exemptions, was almost entirely eliminated (92 percent reduction) after a U.S. Supreme Court ruling limited how broadly the exemption could be applied. However, a significant increase in the use of the interagency memos exemption suggests that some agencies may have expanded their use of this exemption to withhold records that had previously been claimed as internal rules.

## *The Cost of FOIA Processing Varied Significantly Across Agencies*

The average cost of processing a FOIA request varied widely across the 25 agencies examined here. The highest costs per processed request in 2012 were found at the Nuclear Regulatory Commission (\$8,900) and Department of Energy (\$3,800). Several agencies were able to keep costs per request under \$200, including the Department of Homeland Security, which receives and processes more requests than any other agency. The 10 agencies with the highest cost per request all processed fewer than 10,000 requests. This suggests there may be some economies of scale in processing FOIA requests.

# INTRODUCTION

A building block of American democracy is the idea that citizens have a right to information about how their government works and what it does in their name. Over the years, citizens have demanded information about: government grants and loans, the use of public lands, the location of toxic waste dumps, war spending, and policies surrounding the use of drones. Americans believe that scrutiny of government actions makes public officials more accountable to public opinion and that access to public information facilitates and encourages active citizen engagement in our politics. In other words, transparency strengthens democracy.

These values were codified into law in 1966 with the passage of the Freedom of Information Act (FOIA). The law has been strengthened and improved periodically since it was passed so that it currently requires federal agencies to formally respond to requests for information within 20 working days (with some ability to pause the clock while getting clarification from requesters). However, compliance with these time limits has been lax, and delays that often last several months are not uncommon.

How does this year's processing of FOIA requests compare to past years and past administrations? How well have the agencies met the president's 2009 goal of reducing FOIA backlogs?<sup>3</sup> This report examines the processing of FOIA requests from 25 major federal agencies in 2012 within the context of FOIA performance since 1998.<sup>4</sup>

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3 Macon Phillips, "Change has come to WhiteHouse.gov," The White House, Jan. 20, 2009. [http://www.whitehouse.gov/blog/change\\_has\\_come\\_to\\_whitehouse-gov](http://www.whitehouse.gov/blog/change_has_come_to_whitehouse-gov).

4 All cabinet agencies except Health and Human Services and Veterans Affairs are included. These two agencies were excluded because privacy issues around health records made them unsuitable for comparison with other agencies. Some smaller agencies were also excluded. In 2003, multiple agencies were combined into the Department of Homeland Security, so some parts of the analysis are only shown for this period.

# FOIA REQUESTS ROSE AND PROCESSING IMPROVED

Each year, federal agencies receive hundreds of thousands of requests for information under the Freedom of Information Act. The 25 agencies included in this analysis have received, on average, more than 500,000 requests each year since reporting began in 1998.

FOIA requests peaked in 2000 and then began to decline after 2001. Observers speculate that two factors may have influenced the trend. First, the more secretive policies of the George W. Bush administration may have made FOIA a less attractive avenue for obtaining information. Second, expanded posting of information on government websites may have reduced the need to use FOIA in some cases.

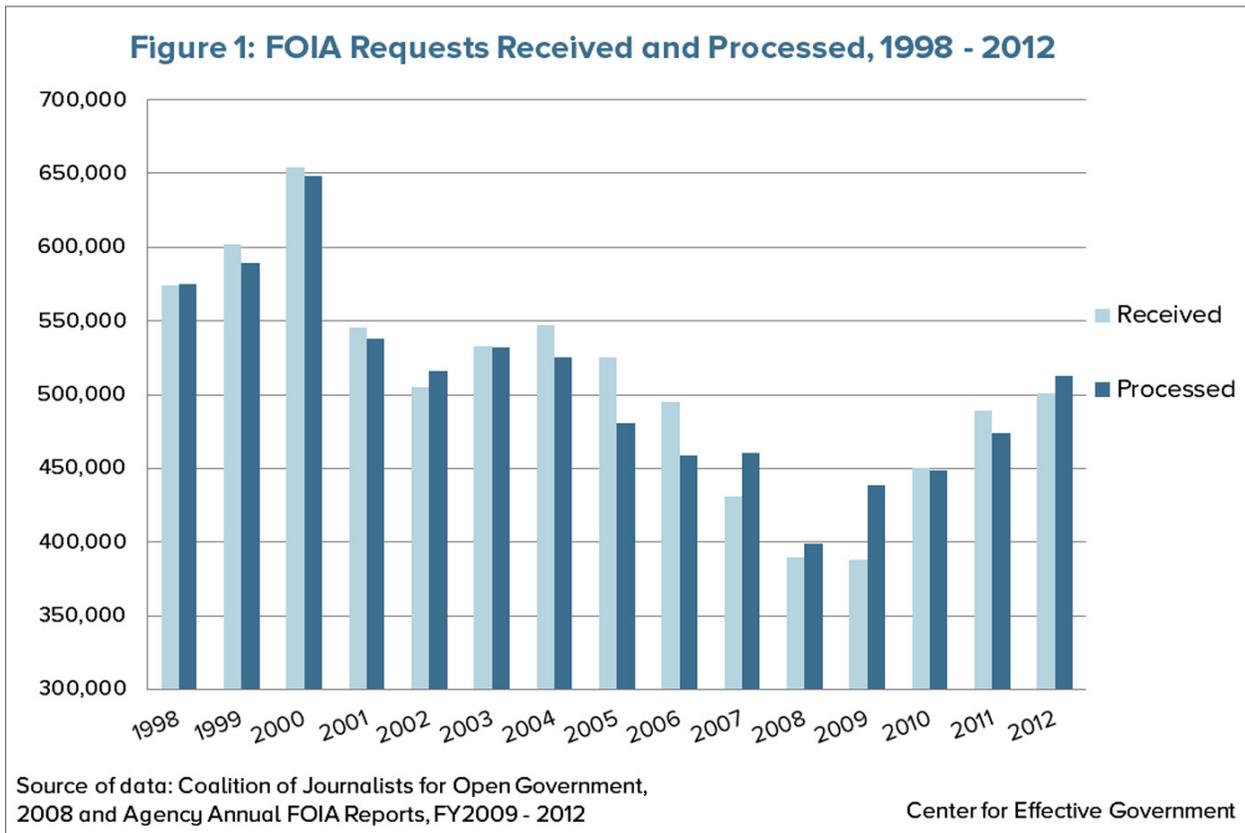
Since 2010, the first full year after the Obama administration came to power, the number of FOIA requests received has increased. The public may be filing more requests because they feel that they are more likely to receive information in a timely manner as a result of the administration's emphasis on openness. Or it could be that reforms during the Bush administration (a 2005 executive order to reduce FOIA backlogs<sup>5</sup> and 2007 amendments to FOIA that made it easier for requesters to recover their litigation costs) encouraged more FOIA requests.<sup>6</sup>

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5 George W. Bush, Executive Order 13392, "Improving Agency Disclosure of Information," The White House, Dec. 14, 2005. <https://www.federalregister.gov/executive-order/13392>.

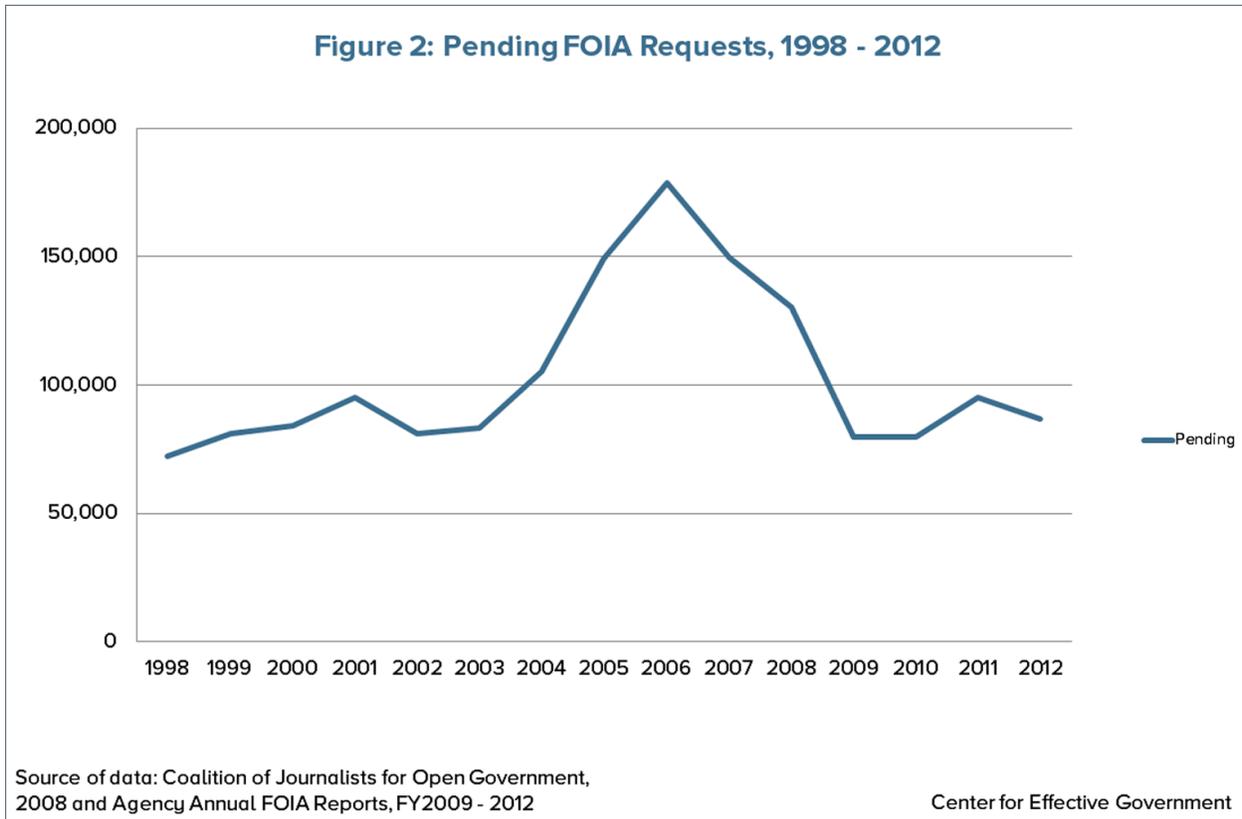
6 OPEN Government Act of 2007, P.L. 110-175.

## FOIA Requests Received and Processed, 1998-2012



As Figure 1 shows, the Obama administration processed more FOIA requests in 2012 than in any year since 2004. Even though the agencies received 11,000 *more* requests than in 2011, the 25 agencies tracked in this analysis processed more than 512,000 requests: 39,000 (eight percent) more FOIA requests were processed in 2012 than in 2011.

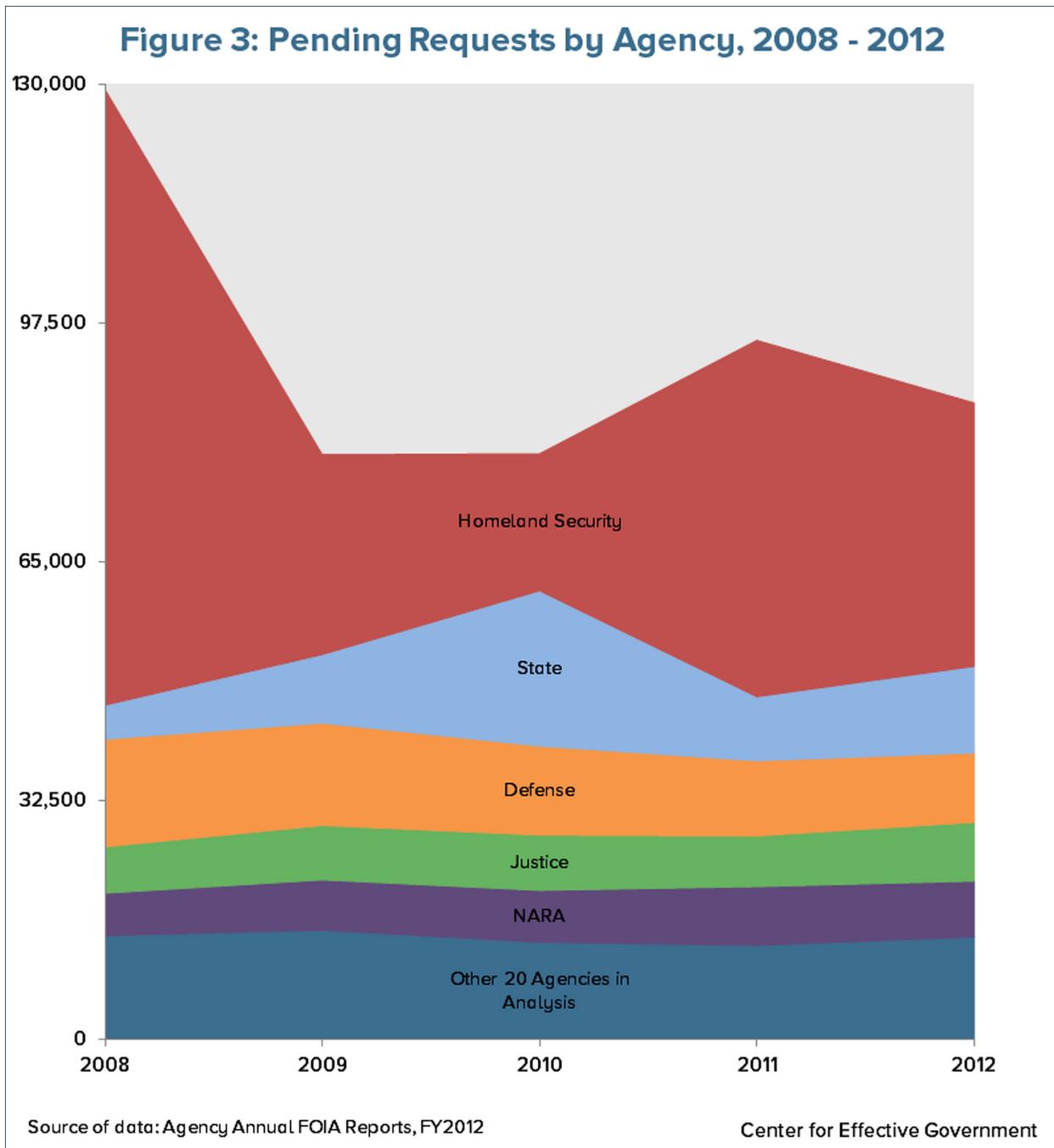
## Agency Performance: Number of Unprocessed Requests Declined and Backlogs Were Reduced



The 25 agencies tracked in this analysis had about 87,000 unprocessed requests at the end of 2012. This represented a 12 percent decline from the previous year. (See Figure 2). Unprocessed requests peaked in 2006 with almost 180,000 requests unprocessed, after three years of declines in processing. Unprocessed requests then dropped through 2009 and began to rise slightly in 2010, followed by a more significant spike in 2011.

### Processing by Agency

Five agencies are responsible for more than 80 percent of the pending requests of the 25 agencies in this analysis. The Department of Homeland Security (DHS) represented more than 40 percent of the pending requests. The agency was also most responsible for the improvement in processing last year. DHS received far more requests than any other federal agency in the analysis, and the number of requests it received continued to grow in 2012 (nearly 15,000 more than in 2011). Despite the high level of requests, DHS was able to process more than 60,000 additional requests



compared to the previous year. **This represented a 41 percent increase in FOIA requests processed in one year.** As a result, its pending requests fell by more than 30 percent from the previous year. Because DHS received more than 38 percent of all requests, its performance buoyed the overall numbers. (See Figure 3).

## *Backlogs Reduced*

In 2008, FOIA reporting guidelines were expanded to include counts of “backlogged” requests. Backlogs are requests pending but past statutory deadlines. In other words, all of the requests an agency should have responded to but has not are counted as backlogged requests. Normally, this would only eliminate from the count the relatively small number of requests an agency received just before the end of the year. However, because agencies have the ability to essentially pause the clock on their 20-day response deadline in various ways, the differences between the count of pending requests and backlogged requests is sometimes significant.

Since taking office, the Obama administration has placed a high priority on reducing backlogs of FOIA requests. In particular, the December 2009 Open Government Directive called on agencies with significant backlogs to reduce them by 10 percent per year.<sup>7</sup>

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<sup>7</sup> Peter R. Orszag, “Open Government Directive,” Office of Management and Budget, Dec. 8, 2009. [http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda\\_2010/m10-06.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf).

<b>Table 1: Progress of the Eleven Agencies with Large FOIA Backlogs in 2009</b>				
<b>Agency</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>Total</b>
<i>Agency reduced FOIA backlogs by 10 percent in all three years</i>				
Interior	Yes	Yes	Yes	3 / 3
Treasury	Yes	Yes	Yes	3 / 3
<i>Agency reduced FOIA backlogs by 10 percent in two years out of three</i>				
Defense	Yes	No	Yes	2 / 3
Homeland Security	Yes	No	Yes	2 / 3
Labor	Yes	No	Yes	2 / 3
<i>Agency reduced FOIA backlogs by 10 percent in one year out of three</i>				
Agriculture	Yes	No	No	1 / 3
Justice	No	Yes	No	1 / 3
State	No	Yes	No	1 / 3
Transportation	Yes	No	No	1 / 3
<i>Agency failed to reduce FOIA backlogs by 10 percent in any of three years</i>				
Central Intelligence Agency	No	No	No	0/3
National Archives and Records Administration	No	No	No	0/3
<b>Total agencies that reduced FOIA backlogs</b>	7 / 11	4 / 11	5 / 11	

Of the 25 agencies tracked in this analysis, 11 agencies<sup>8</sup> had more than 500 backlogged requests in fiscal year (FY) 2009 (See Table 1). Of those 11 agencies, only two met the 10 percent reduction goal each year: the Departments of the Interior and the Treasury. Three other agencies met the goal in two years out of three, and three met the goal in only one year. There were two agencies, the Central Intelligence Agency and the National Archives and Records Administration, which failed to meet the assigned goal in all three years.

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8 The Department of Health and Human Services and the Department of Veterans Affairs both had significant backlogs in FY 2009, but were not included because their FOIA data prior to 2008 prevents them from being compared to other agencies properly.

## *Fewer Releases Include All the Information Requested*

When agencies process FOIA requests, they report the results in one of four categories:

1. Full Grant: the agency provided all records responsive to the request;
2. Partial Grant and Partial Denial: the agency provided a portion of the records requested and withheld a portion of the records under FOIA's exemptions;
3. Full Denial Based on Exemptions: the agency withheld all responsive records under FOIA's exemptions and did not provide any records; or
4. Full Denial Based on Reasons Other than Exemptions: the agency did not provide any records because it determined that the request was not reasonably described, the agency did not have the records, the requestor withdrew the request, the requestor failed to pay applicable fees, or the request was generally improper under FOIA.

This analysis removes the fourth category (denials for reasons other than the content of the request) to create adjusted rates of grants or denials based on exemptions. By removing these requests, we can obtain a better understanding of agencies' actions on requests that were granted or denied when an exemption may have been applied.

**Figure 4: Processed FOIA Requests, 1998-2012**  
**Denials, Partial Releases, Full Releases, as a Percent of Total**



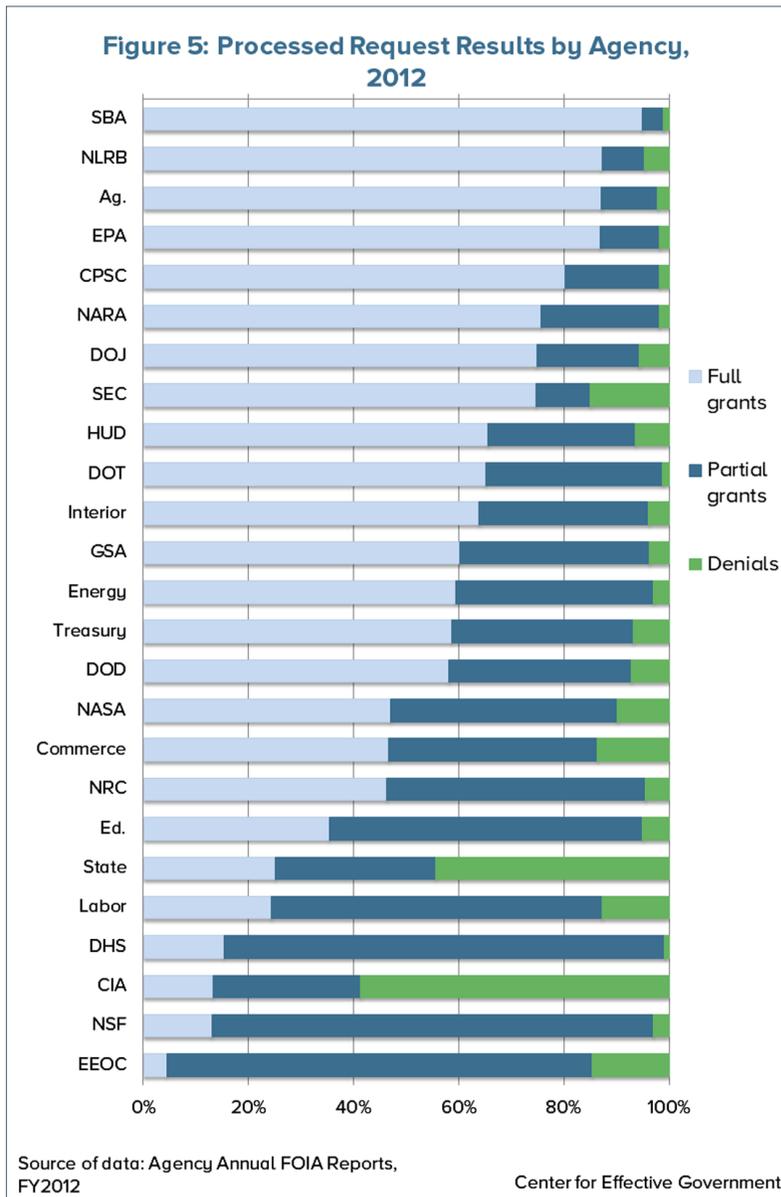
Source of data: Coalition of Journalists for Open Government, 2008 and Agency Annual FOIA Reports, FY2009 - 2012

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Overall, the Obama administration granted, in full or in part, 94 percent of all FOIA requests processed in 2012, essentially no change from the previous year. Full denials, which were often over 12 percent between 1998 and 2001, have been relatively steady around six percent for the last three years. However, the administration’s performance continues to rely much more heavily on partial releases, rather than full releases.

After a steady decline in the Bush years in the percentage of fully granted FOIA requests, full releases rebounded in 2010. However, since then, fully granted requests continued to fall to the lowest level on record – to just under 41 percent, and partially granted requests rose to 54 percent of all requests granted. These statistics on partial releases do not indicate how much of the requested information was granted or how much was withheld. It may be that the vast majority of requested information is being disclosed, or that agencies are withholding extensive portions of requested records. Without better data, it is difficult to determine if increased use of partial grants is a net gain or loss for public disclosure.

## Agency Performance



Federal agencies demonstrated wide variation in their willingness to release full and complete information in response to FOIA requests in 2012. The Small Business Administration (SBA) released full information for 95 percent of the requests processed. (See Figure 5.) By comparison, the Equal Employment Opportunity Commission (EEOC) redacted some information in 96 percent of the requests it processed, a rate exceeded by only two other agencies: the National Science Foundation and Department of Homeland Security. (The low use of full grants at the EEOC may be due to the high amount of privacy information that the commission handles.) Not surprisingly, the State Department and Central Intelligence Agency were most likely to deny FOIA requests outright, at 44 percent and 59 percent, respectively.

## Federal Agencies Are Using Exemptions to Deny More Requests

Under FOIA, agencies must treat information with a presumption of openness and may only withhold information based on a set of exemptions defined by law.

Although the exemptions are specified by law, agencies use their own judgment about whether to

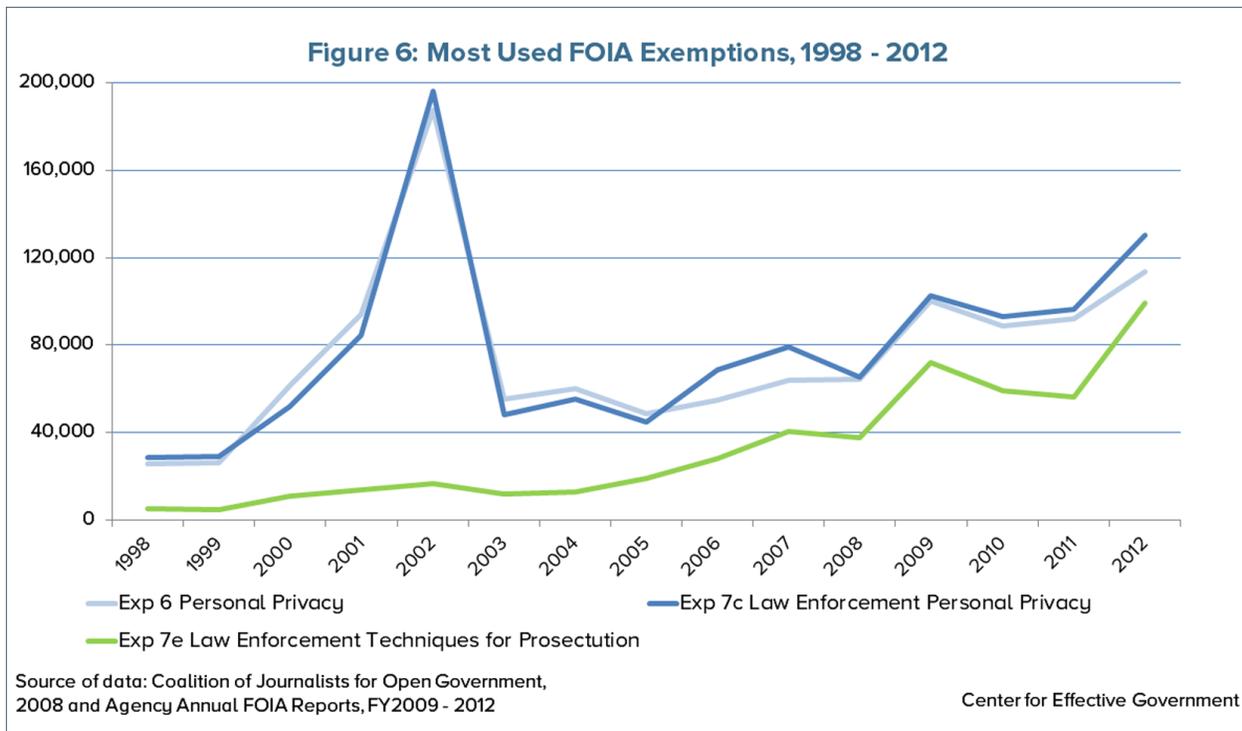
claim an exemption and which exemptions apply. In particular, the exemptions about internal and interagency information allow agencies the most discretionary control, as these exemptions allow the agency to claim that the potential harm from disclosure would be a reduction in government functioning; the safety or rights of American citizens are not at stake.

In 2012, total use of exemptions across the 25 agencies examined rose by 26 percent from the previous year. The pattern of exemptions used also changed.

In 2012, three exemptions (personal privacy; law enforcement personal privacy; law enforcement techniques for prosecution) were used approximately 100,000 times or more and accounted for 71 percent of all exemptions claimed by the federal agencies tracked in this analysis.

### The statutory FOIA exemptions are:

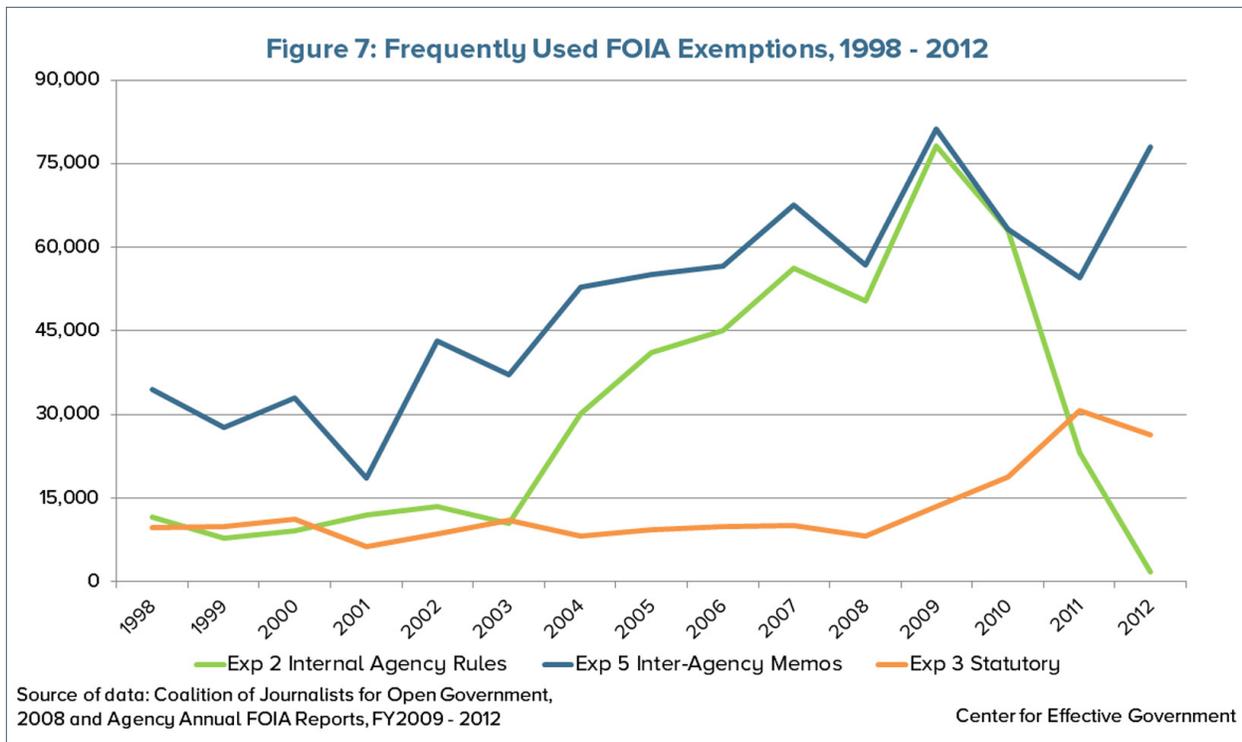
- 1: Classified National Security
- 2: Internal Agency Rules
- 3: Other Statutory Exemptions
- 4: Proprietary Information, Trade Secrets
- 5: Inter-Agency Memoranda
- 6: Personal Privacy
- 7: Law Enforcement Records
  - 7(A): Law Enforcement Proceedings
  - 7(B): Depriving the Right to a Fair Trial
  - 7(C): Personal Privacy
  - 7(D). Identify Confidential Source
  - 7(E): Techniques for Prosecution
  - 7(F): Endanger Life or Safety
- 8: Financial Institution Reports
- 9: Oil and Gas Well Data



The use of personal privacy and law enforcement personal privacy rose 23 percent and 35 percent, respectively. This represents their highest usage levels since 2002, when the use of both exemptions experienced extreme spikes likely related to greater information withholding in the aftermath of the 9/11 terrorist attacks. After fairly steady growth in the use of both since 2003, their use dipped in 2010. But agencies have now resumed their upward trend in use of both exemptions. (See Figure 6.) The Department of Homeland Security is the driving force behind the high use of privacy exemptions, representing 71 percent of the total use of these exemptions.

The causes of the increased use of privacy exemptions in recent years are unclear. It may be due to a significant change in the information being requested. However, some openness advocates continue to be concerned that agencies are stretching the scope of the exemptions to include records not previously considered to be covered by privacy.

Use of the exemption for “techniques for prosecution,” which is information that if disclosed could allow people to circumvent the law or avoid prosecution, also spiked sharply in 2012 (77 percent) and also sets a new record, after two years of reduced use in 2009 and 2010. Once again, DHS is the primary user of this exemption.



Once among the highest used exemptions by federal agencies, the use of the “internal rules” exemption plummeted after 2011, when the March 2011 U.S. Supreme Court decided *Milner v. Navy*, which restricted the government’s use of the exemption.<sup>9</sup>

However, use of the “interagency memos” exemption rose by 43 percent after declining for the past two years. The sharp increase suggests agencies may be substituting this exemption for the internal agency rule after the *Milner* ruling.

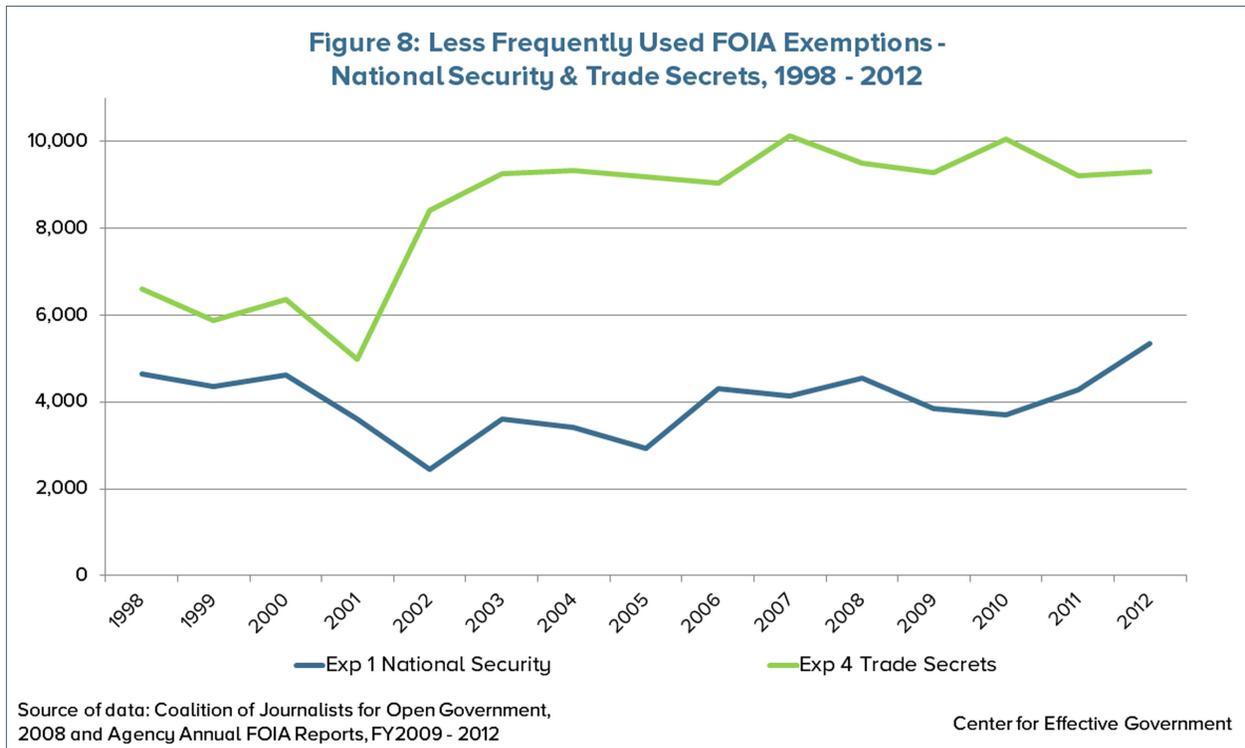
The change also appears to be the result of a deliberate policy change by the Obama administration. The Bush Justice Department specifically encouraged agencies to use the internal agency and interagency exemptions to deny FOIA requests,<sup>10</sup> and their use ballooned during the Bush administration. That growth continued through 2009. In 2010 and 2011, the trend sharply reversed. However, the exemptions diverged in 2012, with the “internal agency rule” exemption dropping to its lowest level on record, while the “interagency memo” exemption returned to near-record highs.

The use of the statutory exemption dropped almost 15 percent in 2012 after three years of steady increases. This was primarily driven by a significant reduction in use of the exemption by the

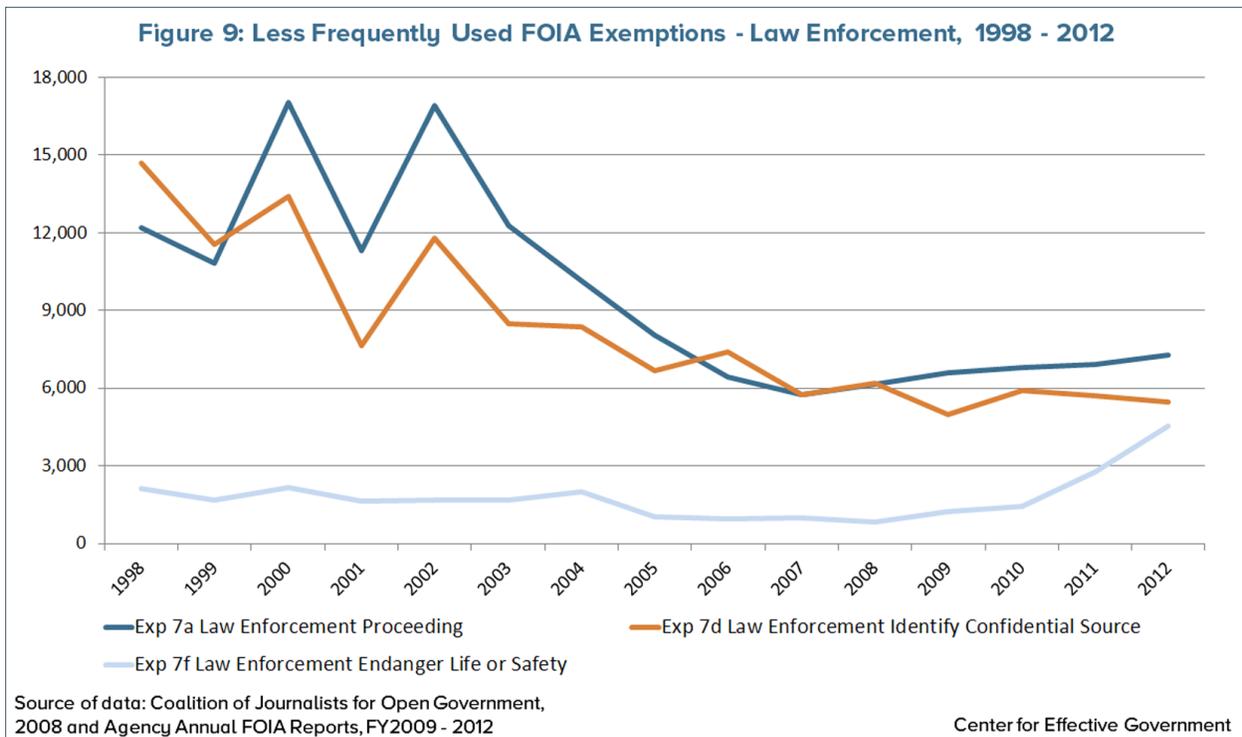
9 *Milner v. Navy*, 131 S.Ct. 1259 (2011). <http://www.supremecourt.gov/opinions/10pdf/09-1163.pdf>

10 U.S. Department of Justice Office of Information Policy, “New Attorney General FOIA Memorandum Issued,” *FOIA Post*, Oct. 15, 2001. <http://www.justice.gov/archive/oip/foiapost/2001foiapost19.htm>.

State Department. In 2011, the State Department sharply increased its use of an exemption to withhold information relating to visa applications, which drove up the usage temporarily. The overall decline in the use of the statutory exemption would have been larger, but DHS doubled its use, and there was a 30 percent increase at the Equal Employment Opportunity Commission.



The classified national security information exemption increased by 25 percent from 2011 to a new record high. Many might expect national security to be major exemption, but in most years, its use has been consistently between only 3,500 and 4,500 uses. The trade secrets exemption remained fairly flat in usage and has consistently been used between 9,000 and 10,000 times each year since 2003.

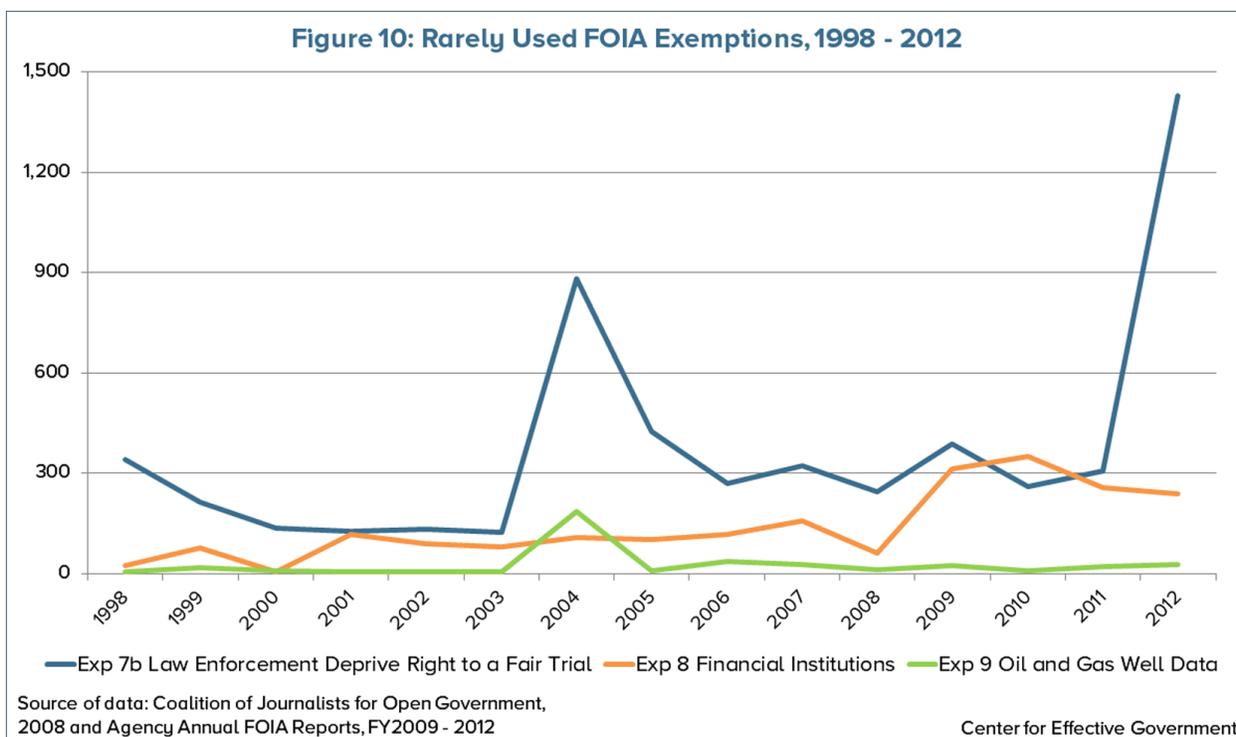


Exemptions due to Law Enforcement Proceedings increased slightly, 5.5 percent, for the fifth year in a row. However, the modest increases in recent years haven't come close to eroding the significant drop in use of this exemption experienced between 2002 and 2007, when use fell 66 percent.

The Confidential Source exemption continued to decline, dropping almost five percent in use from last year, reaching its lowest level on record other than in 2009.

The exemption for "Endangering Life or Safety" increased by 65 percent to a new record high following a 92 percent increase last year. The recent increases are primarily driven by the sudden higher use of the exemption by the Department of Defense. Defense went from using the exemption around 20 to 30 times each year between 2008 and 2010 to using it 1,005 and 2,476 times in 2011 and 2012, respectively. This bears watching.

Figure 10: Rarely Used FOIA Exemptions, 1998 - 2012



The exemption “Deprive the Right to a Fair Trial” also experienced a sharp increase in 2012. The relatively little-used exemption increased to a new high of 1,429 uses. Except for a spike in usage in 2004, when it was used 883 times, the exemption has rarely been used more than 400 times in a year. This spike may be related to the sharp increase also seen in use of exemption 7(E), techniques for prosecution.

The Financial Institution Reports exemption decreased in usage almost eight percent from the previous year. Though use of this exemption remains low, the higher usage since 2009 is likely related to increased requests for information related to the federal government’s efforts to bail out failing banks.

The Oil and Gas Well Data exemption is the least used exemption by far, typically being used less than 30 times a year.

# COST OF FOIA PROCESSING VARIES ACROSS AGENCIES

For the first time, we are including estimates by agencies of the money spent processing FOIA requests. The 2012 cost data reveals an enormous range in the efficiencies being achieved in processing FOIA requests across the federal government.

The agency with the highest costs per processed request was the Nuclear Regulatory Commission (NRC), which spent \$8,900 per request processed in 2012. The Energy Department had the second-highest costs per request processed, at \$3,800. As both agencies possess nuclear information, it could be that processing such information is uniquely expensive.

**Table 2: Cost of FOIA Processing by Agency, 2012**

Agency	Requests Processed	Cost per Request	Total Cost
EEOC	18,728	\$135.71	\$2,541,508.69
NLRB	6,276	\$154.06	\$966,901.00
Homeland Security	205,895	\$178.48	\$36,748,128.58
NARA	13,746	\$223.92	\$3,078,053.00
SBA	3,848	\$425.36	\$1,636,800.00
SEC	11,302	\$453.89	\$5,129,895.00
CPSC	2,452	\$483.79	\$1,186,256.00
Agriculture	21,686	\$514.34	\$11,153,996.88
Labor	19,224	\$655.36	\$12,598,645.00
NSF	415	\$679.33	\$281,920.00
Treasury	16,705	\$844.75	\$14,111,579.49
Justice	68,531	\$844.82	\$57,896,288.63
Transportation	10,988	\$1,037.86	\$11,404,027.00
State	15,343	\$1,073.30	\$16,467,583.00
Defense	66,651	\$1,075.51	\$71,683,740.00
HUD	2,544	\$1,205.99	\$3,068,027.00
Education	2,346	\$1,306.61	\$3,065,312.62
GSA	1,773	\$1,353.64	\$2,400,000.00
Interior	6,285	\$1,762.57	\$11,077,761.12
EPA	9,259	\$1,901.11	\$17,602,417.00
NASA	895	\$1,998.60	\$1,788,743.23
Commerce	1,701	\$2,204.91	\$3,750,560.07
CIA	3,586	\$2,983.83	\$10,700,000.00
Energy	2,258	\$3,786.94	\$8,550,902.62
NRC	293	\$8,860.59	\$2,596,152.00

On the low end of the cost scale, the Equal Employment Opportunity Commission achieved the best cost effectiveness, spending only \$135 per request processed. Perhaps most surprising was the strong cost-effectiveness performance by the Department of Homeland Security. The agency receives and processes more requests than any other agency by far, and it was the third best in cost effectiveness, spending only \$178 per request processed.

The 10 agencies with the highest cost per request all processed fewer than 10,000 requests. However, four other agencies that processed fewer than 10,000 requests had significantly lower costs per request – the National Labor Relations Board, the Small Business Administration, the Consumer Product Safety Commission, and the National Science Foundation – so it is possible for agencies with smaller FOIA programs to achieve a lower cost per request.

Agencies with the highest number of requests processed have costs ranging from \$200 to \$1,000 per request processed. The wide differences in processing costs among agencies might merit closer investigation by the Department of Justice's Office of Information Policy or the National Archives and Records Administration's Office of Government Information Services. Agencies may not be using the same factors to generate their cost numbers. However, if the models are consistent and accurate, then a larger question arises about whether more efficient processing techniques can be shared across government or whether a shared service approach might allow agencies with smaller FOIA programs to benefit from the efficiencies of a larger program.

# FINAL REMARKS

The Obama administration's new FOIA policies and early emphasis on open government has had an impact. However, the new emphasis on open government also seems to have encouraged a surge in the use of FOIA requests, after many years of steady decline during the Bush administration. Most agencies have been able to stay ahead of the increased requests, though some have struggled in individual years.

However, although the number and timeliness of the FOIA requests processed has improved, fewer people are getting complete and full documents. Over the last four years, the proportion of FOIA releases that go out with redacted information has significantly increased. Well over half of all processed requests withhold some information. Agencies are increasingly using exemptions to limit the amount of information disclosed in response to FOIA requests. This is a troubling development for an administration with an avowed commitment to openness.

# METHODOLOGY

These data come from the annual Freedom of Information Act (FOIA) reports filed by federal agencies with the Department of Justice. Data for 1998-2007 are derived from a compilation of annual FOIA reports prepared by the Coalition of Journalists for Open Government.<sup>11</sup>

## *Agencies Included in This Analysis*

This analysis includes data from 25 federal agencies, including most cabinet-level departments; see the list of agencies at the end of this section.

Agencies were selected to provide comparability over time. Prior to 2008, agency data may have included “first-person” requests, i.e. requests for the requester’s personal information, even if those requests were processed under the Privacy Act and not FOIA.<sup>12</sup> This particularly affected the number of FOIA requests received and processed by the Department of Health and Human Services, the Department of Veterans Affairs, and the Social Security Administration. Accordingly, we have excluded data from these agencies for consistency purposes across the years.

## *Exclusions*

Agency annual reports do not indicate the use of exclusions, which could complicate the number of fully granted requests. The Freedom of Information Reform Act of 1986<sup>13</sup> created three law enforcement exclusions, which allow agencies to treat information related to pending investigations, informants, and classified foreign intelligence as not subject to FOIA.<sup>14</sup> When using exclusions, agencies withhold such information from requesters without telling them that they have withheld information. Therefore, a requester may be informed that the agency has provided all responsive records when, in fact, other records have been excluded from processing under FOIA. Consequently, each request reported as fully granted may not have actually been fully granted.

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11 “An Opportunity Lost: An in-depth analysis of FOIA performance from 1998 to 2007,” Coalition of Journalists for Open Government, July 3, 2008. [http://www.cjog.net/documents/Part\\_1\\_2007\\_FOIA\\_Report.pdf](http://www.cjog.net/documents/Part_1_2007_FOIA_Report.pdf).

12 Reporting guidelines for 2008 and subsequent years directed agencies to exclude first-person requests. See U.S. Department of Justice Office of Information Policy, “2008 Guidelines for Agency Preparation of Annual FOIA Reports,” *FOIA Post*, May 22, 2008. <http://www.justice.gov/oip/foiapost/guidance-annualreport-052008.pdf>.

13 P.L. 99-570.

14 5 U.S.C. § 552(c)(1), (2), (3).

However, the use of exclusions is believed to constitute a very small portion of all requests that agencies process. In their Chief FOIA Officer Reports, agencies reported invoking exclusions fewer than 200 times in FY 2011. Complete data is not yet available for FY 2012.

## *Other Limitations and Notes*

- All years are fiscal years.
- Most percentages in the text do not have decimal places, and large numbers are often rounded, so they may not match graphs and tables exactly.
- Reporting began in 1998;<sup>15</sup> data from earlier years are not available.
- Reporting guidelines were changed in 2008 to require agencies to report backlogged requests (i.e., requests pending but past the statutory deadlines). Prior to 2008, only total pending requests were reported. Thus, this report indicates the number of pending requests, not backlogged requests.
- Government agencies and their activities have changed during the period examined (e.g. the Department of Homeland Security was created in 2003).
- Any reporting errors that may potentially appear in agency data would weaken the validity of the data.
- These data, while important, are not the only useful indicators of FOIA performance.

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<sup>15</sup> As required by Sec. 10 of the Electronic Freedom of Information Act Amendments of 1996, P.L. 104-231. See 5 U.S.C. § 552(e).

## *Agencies Included in This Analysis*

Department of Agriculture

Department of Commerce

Department of Defense

Department of Education

Department of Energy

Department of Homeland Security (*after 2003*)

Department of Housing and Urban Development

Department of the Interior

Department of Justice

Department of Labor

Department of State

Department of Transportation

Department of the Treasury

Central Intelligence Agency

Consumer Product Safety Commission

Environmental Protection Agency

Equal Employment Opportunity Commission

General Services Administration

National Aeronautics and Space Administration

National Archives and Records Administration

National Labor Relations Board

National Science Foundation

Nuclear Regulatory Commission

Securities and Exchange Commission

Small Business Administration





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