

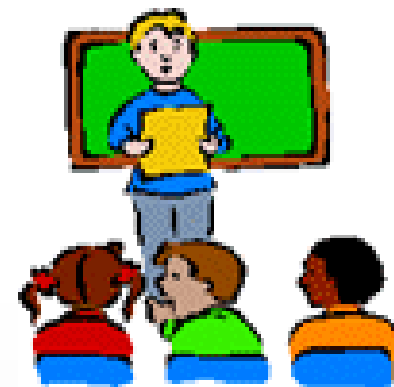
The Freedom of Information Act and Open Government at Census

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Chief, Freedom of Information Act and Open Government Branch

Today's Session

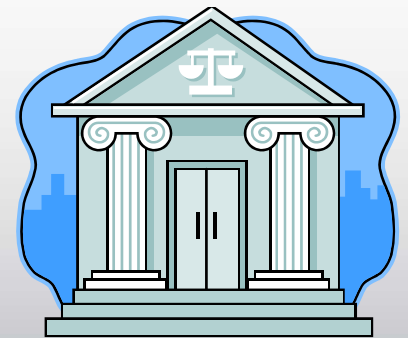
What Will Be Discussed?

- Brief Overview of the FOIA
- FOIA at the Census Bureau – Basics
- Census FOIA Requests by the Numbers
- Optimizing Customer Service
- FOIA – A Short Primer
- Question and Answer Time



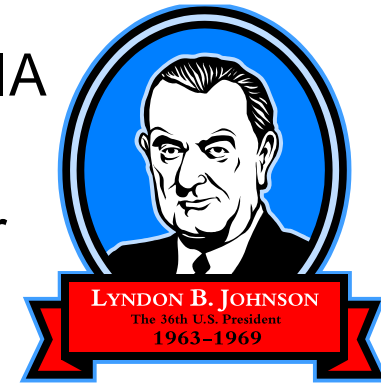
Brief Overview of FOIA

- The Freedom of Information Act (FOIA) is a law that gives people the right to access information from the federal government
 - ✓ FOIA is often described as the law that keeps citizens in the know about their government
 - ✓ FOIA requires federal agencies to disclose information contained in federal records, unless it falls under:
 - one of nine exemptions, or
 - one of three law enforcement exclusions
- The right to access may be enforceable in Federal Court



Brief Overview FOIA (continued)

- President Lyndon Johnson signed the FOIA into law on July 4, 1966
- FOIA has been amended periodically over the years (for example, Electronic FOIA Amendments of 1996)
- FOIA applies only to the Executive Branch of the federal government
- States have their own access laws for state records
 - ✓ Occasionally, we receive request citing state FOI laws
 - ✓ Those access laws do not apply to the federal government
- Sweden had the first such “access” law adopted in 1766



Brief Overview FOIA (continued)

- FOIA laws are spreading throughout the world; for example:
 - ✓ Canada introduced their FOIA in 1983
 - ✓ Chile's FOI took effect in 2000
 - ✓ United Kingdom implemented at the national level in 2000
 - ✓ Uruguay enacted in 2008



Brief Overview of FOIA (continued)

- Legal or other authorities that apply to the FOIA:
 - General
 - ✓ Title 5, U.S.C., Section 552
 - ✓ Open Government Act
 - Census Bureau specific:
 - ✓ Title 15, Code of Federal Regulations, Subpart A
 - ✓ Census Bureau Policy and Procedures Manual Chapter C-4
 - ✓ DAO 205-12 (Public Information)
 - ✓ DAO 205-14 (Processing Requests Under the FOIA)




Available at <http://www.census.gov/about/policies/foia/resources.html>

FOIA at the Census Bureau – Basics



Our FOIA and Open Government Web Page



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Welcome to Census's Freedom of Information Act (FOIA) and Open Government (OG) Page. This site includes helpful information about the FOIA, Privacy Act, and OG. We will continue to update this site to bring you current program information.

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FOIA at the Census Bureau

What is Our Policy?

- The Census' policy is to implement the FOIA uniformly and consistently, and to provide maximum allowable disclosure of records.
- Requesters are treated equally under the FOIA; however, in some circumstances distinctions are made in order to determine:
 - ✓ fee category,
 - ✓ fee waiver requests, and
 - ✓ requests for expedited processing

FOIA at the Census Bureau

What is the Lead Office for FOIA?

- The FOIA and Open Government Branch within the Policy Coordination Office:
 - ✓ Central clearinghouse for all Census FOIA (and Privacy Act) requests
 - ✓ Responsible for processing all Census FOIA (and Privacy Act) requests
 - ✓ Manages the Census Bureau Open Government program

FOIA at the Census Bureau

Who's On Our Staff?



- FOIA/Privacy Act Officer
 - ✓ Responsible for ensuring that the Census is compliant with the FOIA
 - ✓ Ensures that Census is working efficiently on FOIA requests and appeals, and constantly improving how the Census works with the FOIA
- FOIA Public Liaison
 - ✓ Reports to the FOIA/Privacy Act Officer
 - ✓ Serves as the supervisory official to whom a requester can raise concerns about the service the requester has received
 - ✓ Responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes
- FOIA Analysts
 - ✓ Responsible for processing FOIA and Privacy Act requests

FOIA at the Census Bureau

Who's On Our Staff?

(continued)

- Open Government Liaison
 - ✓ Responsible for managing the Census Open Government program
- Program Analyst
 - ✓ Provides support to the Census FOIA and Open Government programs
- Presidential Management Fellow
 - ✓ Provides support to the Census FOIA, Open Government, and Privacy Compliance programs

FOIA at the Census Bureau

How Do We Keep Sharp?



- Training is a priority at Census
 - ✓ Staff attend multiple annual Department of Justice training offerings
 - ✓ Staff present monthly lunch and learn sessions on various FOIA topics to Census employees; serves not only to train those employees, but also reinforces staff knowledge of the FOIA
 - ✓ We offer quarterly training classes to Census staff that supervise and manage staff responsible for fulfilling FOIA requests
 - ✓ Internal FOIA Boot Camp Training Sessions for FOIA staff
- United States Census Bureau Freedom of Information Act (FOIA) Handbook for FOIA Professionals

FOIA at the Census Bureau

How Do We Keep Sharp?

(continued)

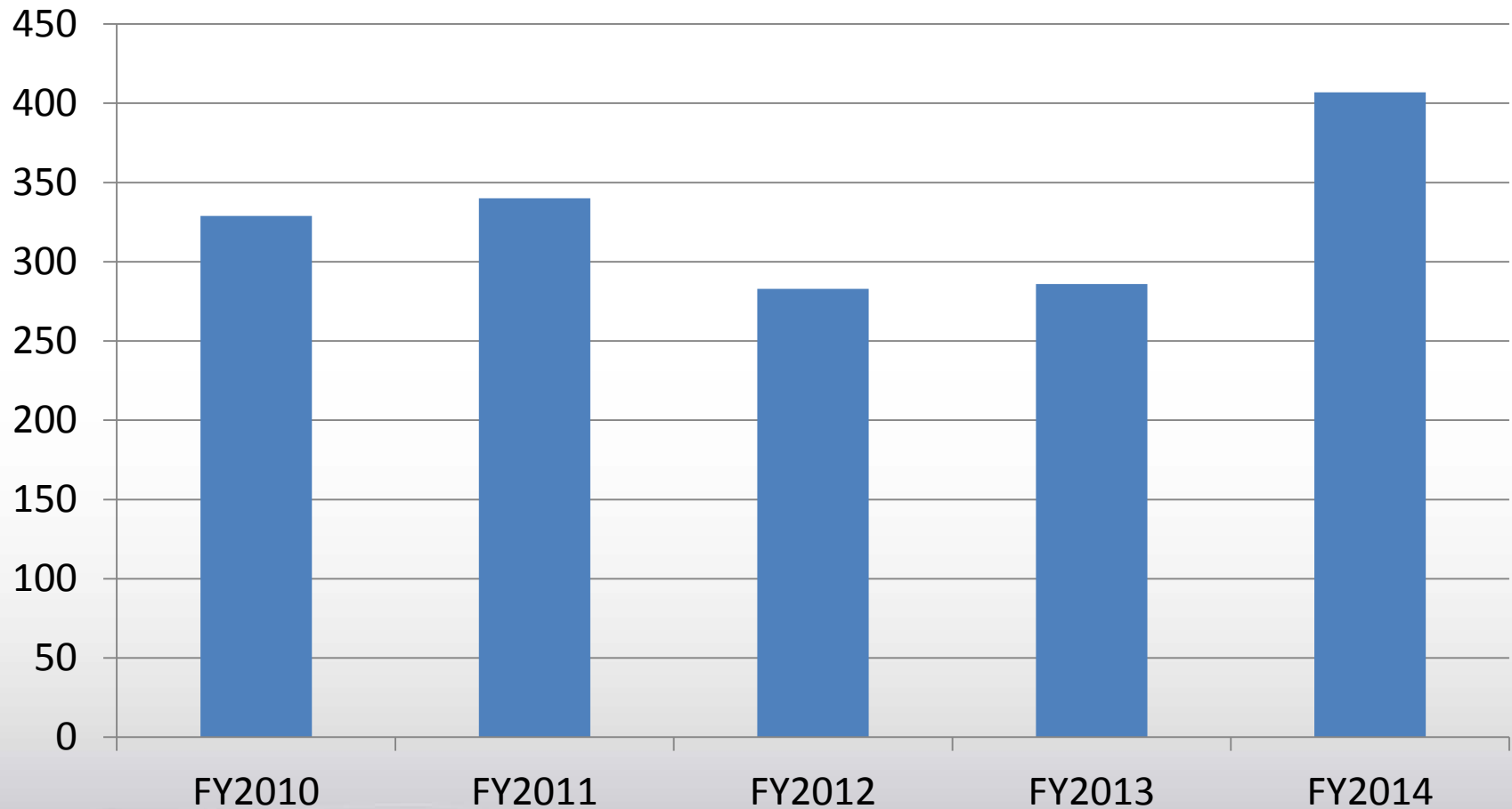
- Staff are members of professional society for access professionals—The American Society for Access Professionals (ASAP)
 - ✓ Attend annual training classes and network with other FOIA professionals
 - ✓ Take webinar courses via ASAP web site on specialized FOIA topics
- ✓ Weekly staff meetings at which FOIA topics are discussed and training exercises may take place



Census FOIA Requests BY The Numbers



Number of FOIA Requests Received by Fiscal Year



FOIA at the Census Bureau

Requests by the Numbers for FY2014*

	Number of Full Grants	Number of Partial Grants/ Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Denials Based on Reasons Other than Exemptions									
				No Records	All Records Referred to Another Component or Agency	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other *Explain in chart below	TOTAL
U.S. Census Bureau	127	33	50	22	4	13	24	13	68	9	12	26	401

- Other:
 - ✓ Records are publicly available = 25
 - ✓ Requester received documents outside of the FOIA = 1

*From Census Bureau 2014 Annual FOIA Report

FOIA at the Census Bureau

Requests by the Numbers for FY2014*

	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
U.S. Census Bureau	3.00	4.18	0	20	7.00	16.05	0	162	1.50	11.87	0	308

*From Census Bureau 2014 Annual FOIA Report

FOIA at the Census Bureau

What Are the Most Used Exemptions?

- The most used FOIA Exemptions:
 - ✓ Exemption 3 (55) – exempts from disclosure information prohibited from disclosure by another statute
 - ✓ Exemption 6 (23) – exemptions from disclosure information about individuals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, so long as that invasion is not outweighed by a public interest in disclosure
- Exemptions used by Census last year: 2, 3, 4, 5, 6, 7A,7C



*From Census Bureau 2014 Annual FOIA Report

FOIA at the Census Bureau

What Are Some Common Requests?

- Although we receive a wide range of requests for record types, some common ones include:

- ✓ Contracts
- ✓ Birth Certificates
- ✓ Automated Export System (AES) data
- ✓ First- and third-party personnel records
- ✓ Decennial Census records



FOIA at the Census Bureau – Optimizing Customer Service



Our Resources Web Page



Open Government and FOIA

Event

FOIA Requests

Privacy Act Requests

Open Government

FOIA Library

Age Search and Birth Records


Resources

Contact Us

Resources

[Tweet](#) [Share](#)

 [U.S. Census Bureau FOIA Reference Guide](#) [<1.0 MB]

 [Policies and Procedures Manual: Chapter C-4 - Requests for Records under the Freedom of Information Act \(FOIA\) and the Privacy Act \(PA\)](#) [<1.0 MB]

[Department of Commerce FOIA/Privacy Act Contacts](#)

[FOIA \(5 U.S.C. § 552\)](#)

[Privacy Act \(5 U.S.C. § 552a\)](#)

[Department of Commerce FOIA Regulations, 15 CFR Subpart A](#)

[Department of Commerce Privacy Act Regulations, 15 CFR Subpart B](#)

What's New in FOIA

[Department of Justice](#)

What's New in Privacy

[Keep up to date with current FOIA/Privacy hearings](#)

How We Compare to Other Agencies

[FOIA.GOV](#)

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SEARCH FOIA REQUESTS

MAKE A FOIA REQUEST

CREATE AN ACCOUNT

Guest users are welcome to submit requests, search for previously released records, and generate reports, but guests will have limited tracking and communications features. Enhanced features are available to users with accounts.

Benefits of an Account : Sign up for a FOIA account today to receive the benefits of streamlined request creation and monitoring of created requests. [Create An Account](#)

FOIAonline

The Freedom of Information Act (FOIA) gives you the right to request information from federal agencies. From FOIAonline you can submit FOIA requests to all participating agencies, track the status of requests, search for requests submitted by others, access previously released records, and generate agency-specific FOIA processing reports.

FOIAonline participating agencies include: the Environmental Protection Agency, Department of Commerce (except the US Patent and Trademark Office), U.S. Customs and Border Protection, Office of General Counsel of the National Archives and Records Administration, Merit Systems Protection Board, Federal Labor Relations Authority, and the Pension Benefit Guaranty Corporation.

New: As of February 1, 2014, the Department of the Navy (including the Navy and the Marine Corps) joined FOIAonline as a participating agency. [A chart provides further details on the information available in FOIAonline by participating agency.](#)

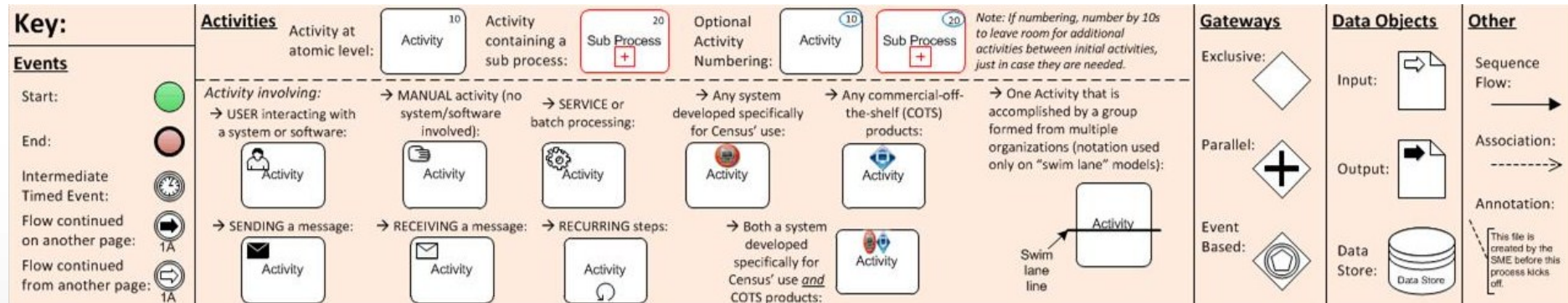
Requests under the Privacy Act must be sent directly to the appropriate agency.

FOIA at the Census Bureau

How Do You Contact Us?

- Customer service line: (301) 763-2127
- Email: census.efoia@census.gov

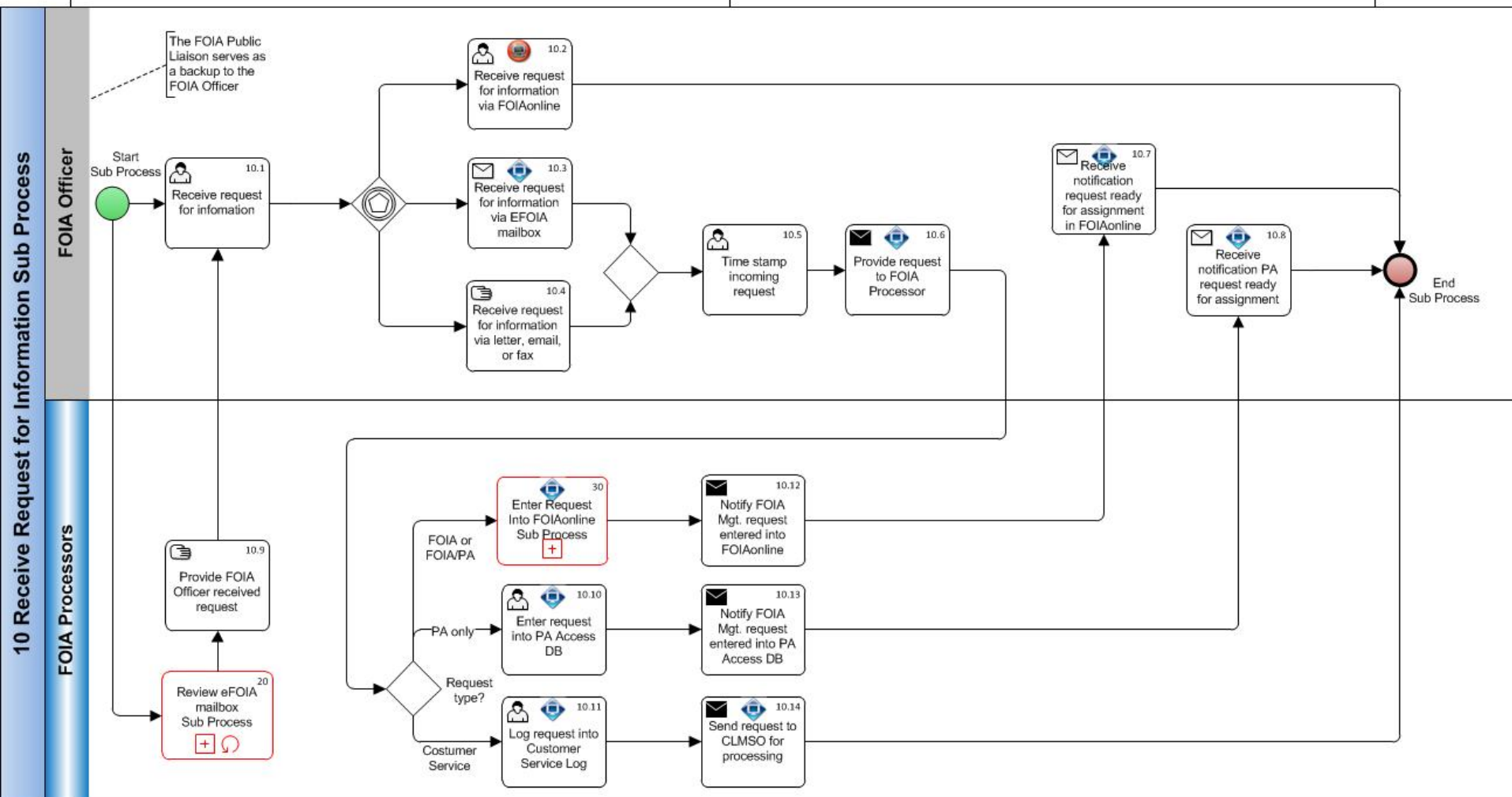
Census FOIA Process Workflows



Processing New Requests - The Intake Process

10 Receive Request for Information Sub Process

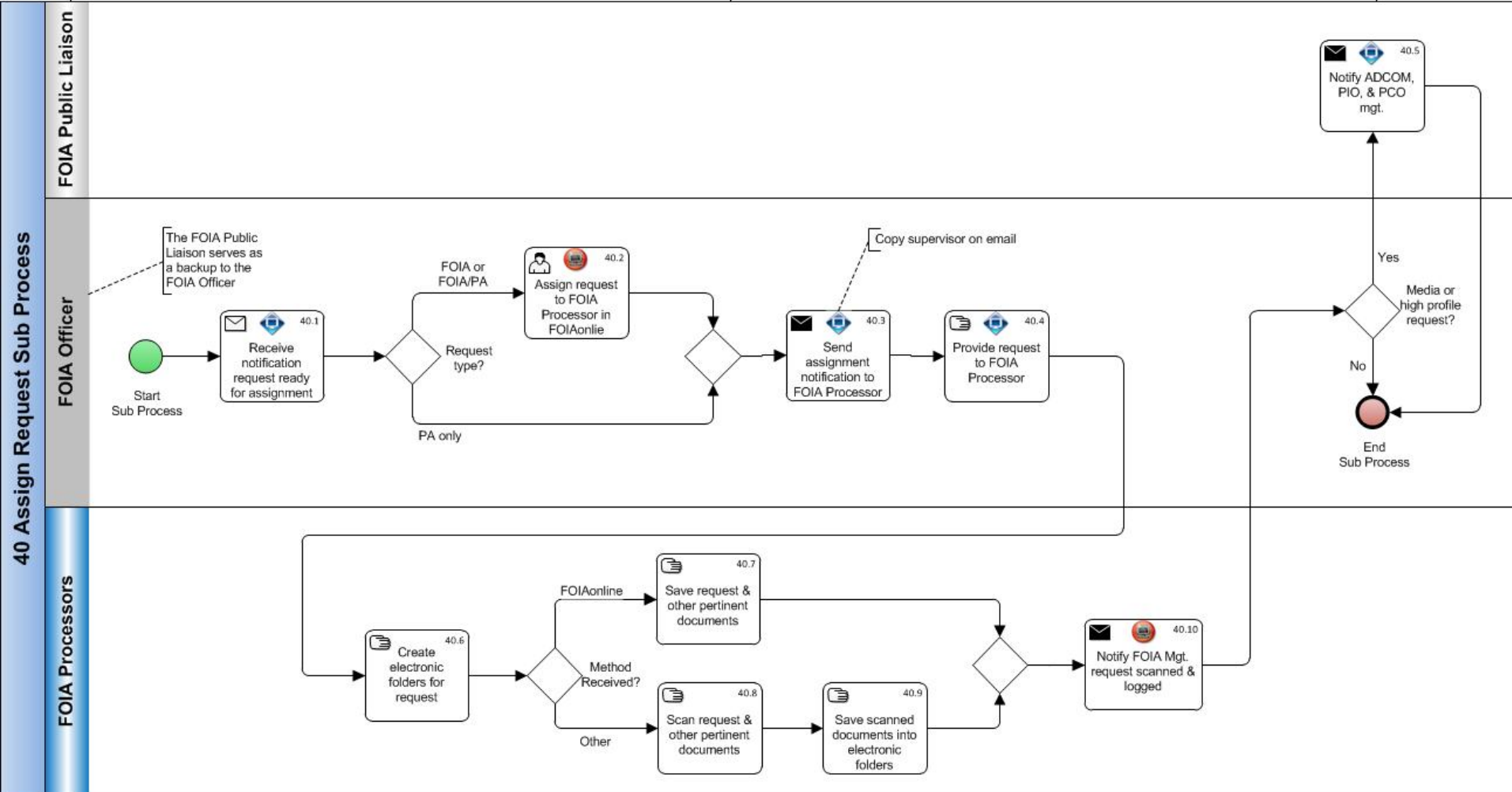
Receive and assess type of request for information



Processing New Requests - Assignment Process

40 Assign Request Sub Process

Receive, assess type, and assign request for information



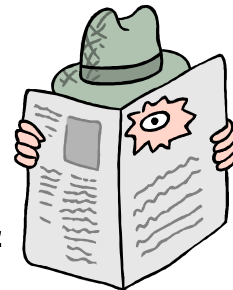
FOIA – A Short Primer



FOIA – A Short Primer

How Do We Tell If It Is a FOIA Request?

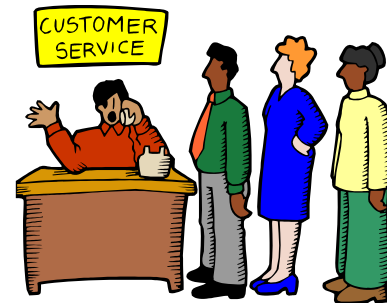
- Any request or correspondence which asks for existing federal agency records that are not standard Census Bureau statistical data products, regardless of whether the request refers to the FOIA, should be treated as a FOIA request
- Requests must be made in writing
 - ✓ Requests cannot be made verbally; this means FOIA staff cannot write the request down for the requester
 - ✓ How to make your request:
http://www.census.gov/foia/foia_requests/how_to_file_a_foia_request.html



FOIA – A Short Primer

Who May Make a Request?

- Any person; exclusions from "any person" are:
 - ✓ Federal agencies
 - ✓ Fugitives from Justice
 - ✓ Foreign governments requesting information from intelligence agencies
 - ✓ Heads of congressional committees (for purposes of an investigation)
- "Any person" regardless of citizenship, includes:
 - ✓ Individuals
 - ✓ Businesses (corporations, sole proprietorships, etc.)
 - ✓ Governments (foreign, state, or local)
 - ✓ Universities and not-for-profit organizations
 - ✓ Any other entity you can think of



FOIA – A Short Primer

Who May Make a Request?

- Federal employees can submit FOIA requests, but only as a private citizen
 - ✓ Cannot be done during normal duty hours
 - ✓ Cannot use government equipment
 - ✓ Cannot be done in his/her official capacity
 - Requests for records of a Federal agency made by a Federal employee acting in his/her official capacity generally are not treated as FOIA requests. Instead, such requests are processed as requests made under the Privacy Act (5 U.S.C. § 552a)



FOIA – A Short Primer

How Do We Tell If It Is A FOIA Request?

- Requests must be for agency records
- Agency records:
 - ✓ Those either created or obtained by an agency
 - ✓ Those under agency control at the time of the request
- Agency record has a very broad definition, includes email, paper documents, tapes, photos and electronic records generally in the possession and control of the agency



FOIA – A Short Primer

How Do We Tell If It Is a FOIA Request?

- Information requests received by telephone are not deemed to be FOIA requests but, as appropriate, the requester should be courteously provided instructions on how to submit a proper FOIA request
- Requests for records or information customarily made available to the public through the Federal Register or as part of the Department's regular information dissemination activities are not considered to be FOIA requests
- Requests for records or information that are normally provided by the Department under laws other than the Act (e.g., user charge statutes, per 15 CFR Section 4.11(k)) are not considered to be FOIA requests



FOIA – A Short Primer

What is a Proper FOIA Request?

- The FOIA specifies two requirements for a FOIA request:
 - ✓ “It must reasonably describe the records sought”
 - ✓ It must be made in accordance with the agency’s published FOIA regulations; in our case, 15 CFR Subpart 4
- FOIA Update, Vol. VII, No. 1, at 6, advises that it is “good policy for agencies to treat all first-party requests as FOIA requests, regardless of whether FOIA is cited by the requester”
 - ✓ Reason why we process PA requests under both the PA and FOIA

FOIA – A Short Primer

Are There Different Types of FOIA Requests?

- There are two types of requests:
 - ✓ Formal – requests usually include language such as: “Under the Freedom of Information Act, 5 U.S.C. § 552, I am requesting copies of...”
 - ✓ Informal – may be a request for information, but it does not explicitly state that it is being requested under the FOIA



FOIA – A Short Primer

Are There Different Types of FOIA Requests?

- Informal requests:
 - ✓ The District Court for the District of Columbia has held that, "a person need not title a request for government records a 'FOIA request.'" Newman v. Legal Servs. Corp.
 - ✓ Under 15 CFR Section 4.1, "Information routinely provided to the public as part of a regular Department activity may be provided to the public without [considering the request a FOIA request]," for example:
 - Press releases issued by the Office of Public Affairs
 - Data releases (including scheduled releases)
 - Special Tabulations
 - Customer service requests provided under a separate fee schedule

FOIA – A Short Primer

Time Limits

- The clock starts when the FOIA Officer “sees” and date stamps the incoming request
- An agency has 20 working days to make a determination on a received request
 - ✓ We do not necessarily have to release records within the statutory time limit, but we do have to make our decision
 - ✓ The final determination letter should be sent to the requester as soon as it is signed
 - ✓ A “determination” does not require actual *production* of the records to the requester at the exact same time that the “determination” is communicated to the requester CREW v. Federal Elections Committee
 - ✓ Records must be release shortly after our decision; this means within days or a few weeks, but not months or years



FOIA – A Short Primer

Time Limits - Extensions

- The FOIA Officer may grant a ten-day extension under “unusual circumstances” Pub. Citizen, Inc. v. Dep’t of Educ.
 - ✓ The need to search for and collect records from separate offices
 - ✓ The need to search for, collect, and examine a voluminous amount of records
 - ✓ The need to consult with another agency or two or more agency components
- The extension letter must be sent to the requester by day 19
 - ✓ Please pay attention to the number of days your assigned request is open and the circumstances identified above
 - ✓ We cannot extend 20 days and beyond

FOIA – A Short Primer

Time Limits – Expedited Requests

- FOIA provides for expedited processing of requests in certain instances:
 - ✓ Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual
 - ✓ The loss of substantial due process rights
 - ✓ *A matter of widespread and exceptional media interest involving questions about the Government's integrity which affect public confidence*
 - ✓ *If made by a person primarily engaged in disseminating information*
- The decision on granting or denying the expedited request must be made and provided to the requester within **10 calendar days**



Question and Answer Time

