



## **Assessing Freedom of Information Act Compliance through the 2018 National Archives and Records Administration's Records Management Self-Assessment**

### **EXECUTIVE SUMMARY**

Since 2016, the Office of Government Information Services (OGIS) has collaborated with the Chief Records Officer (CRO) for the U.S. Government to gather government-wide information about Freedom of Information Act (FOIA) administration. Data collected through FOIA questions included in the 2018 Records Management Self-Assessment (RMSA) complement the observations we make as the FOIA Ombudsman, working to improve the FOIA process for all.

The 2018 RMSA survey—administered in March and April of 2019—included six questions regarding FOIA administration. The survey results show that generally:

- Agency FOIA programs are informing their leadership about backlogs and pending requests on a regular basis.
- Records needed to respond to a FOIA request are readily accessible to staff responsible for FOIA.
- Agencies are informing requesters of OGIS's dispute resolution services at some point in the FOIA process.

Two results require further follow-up, which OGIS will undertake in separate assessments:

- Agency employee performance work plans and appraisals generally do not include FOIA performance measures for non-FOIA professionals.
- Although agencies have procedures for preparing documents for posting on FOIA reading rooms, it is largely FOIA staff who are preparing documents for posting.

## BACKGROUND

OGIS's partnership with the CRO to collect government-wide information related to FOIA compliance began with the 2016 RMSA survey, an annual agency self-assessment and reporting tool developed and managed by the CRO to determine whether agencies comply with statutory and regulatory records management requirements. The CRO has issued the RMSA since 2009.<sup>1</sup> OGIS's FOIA questions fit naturally with the RMSA data collection because a strong records management program—which allows agencies to find responsive records—is essential to a successful FOIA program.

In working with the CRO, OGIS has been able to leverage investments by the National Archives and Records Administration (NARA) in survey technology and the CRO's expertise in collecting self-reported compliance information. The RMSA's high response rate in the last few years<sup>2</sup> has helped OGIS better understand FOIA administration across the government, and complements the observations we make through our other activities including providing dispute resolution to requesters and agencies, assessing FOIA compliance, and leading the Federal FOIA Advisory Committee and the cross-agency Chief FOIA Officers Council.

For the 2018 RMSA, conducted in March and April of 2019, three of the six questions regarding FOIA administration tie directly to recommendations from the 2016-2018 term of the Federal FOIA Advisory Committee.<sup>3</sup>

In its 2018 Final Report and Recommendations, the Committee endorsed inclusion of FOIA performance standards in all Federal employee work plans and performance appraisals government-wide. The Committee recommended that the Archivist of the United States direct OGIS to examine the use of FOIA performance standards and submit the results of its assessment and any recommendations to Congress and the President. As a first step in that examination, we included a question on FOIA performance measures in the 2018 RMSA.

We also included two questions in the 2018 RMSA regarding whether agencies have procedures for preparing documents for posting on FOIA reading rooms and who is responsible for

---

<sup>1</sup> See <https://www.archives.gov/records-mgmt/resources/self-assessment.html>.

<sup>2</sup> The RMSA response rate was 100 percent in Calendar Year (CY) 2015 and CY 2016. In CY 2017 and CY 2018, the response rates were 99 percent and 98 percent, respectively. In CY 2019, the RMSA response rate was 96 percent.

<sup>3</sup> See Freedom of Information Act Federal Advisory Committee 2016-2018 Committee Term, "Final Report and Recommendations," April 17, 2018. Available at <https://www.archives.gov/files/final-report-and-recommendations-of-2016-2018-foia-advisory-committee.pdf>. The Committee, comprised of 20 FOIA experts from inside and outside the government who are appointed by the Archivist of the United States, studies the Federal FOIA landscape and advises on improvements to the administration of the statute by the 15 Cabinet-level agencies and 103 independent agencies.

preparing documents for posting.<sup>4</sup> Those questions relate to another FOIA Advisory Committee recommendation that the Archivist direct OGIS to assess the methods agencies use to prepare documents for posting on agency FOIA reading rooms.

The RMSA results from these three questions form the foundation for two separate forthcoming OGIS issue assessments.

One question also new to the RMSA in 2018 pertained to reports to agency leadership about measures such as pending requests and backlogs. Through our agency compliance assessment program, OGIS has observed that well-managed FOIA programs regularly report to their agency leaders on FOIA performance measures.

The two remaining questions mirror 2017 RMSA questions, allowing us to note trends, if any, over time. For the second consecutive year, we asked agencies whether the records needed to respond to FOIA requests are readily accessible and easily located by the staff responsible for FOIA.

Finally, for a third consecutive year, OGIS asked agencies whether they inform requesters about the dispute resolution services offered by OGIS. The question was more targeted in the 2018 RMSA and asked respondents at what point in the FOIA process they alert requesters to OGIS's services.

A complete list of the six questions, each of which is discussed in detail below, is available in the "Methodology" section.

## **DISCUSSION OF RMSA RESULTS**

### **FOIA Performance Measures in Employee Work Plans and Appraisals**

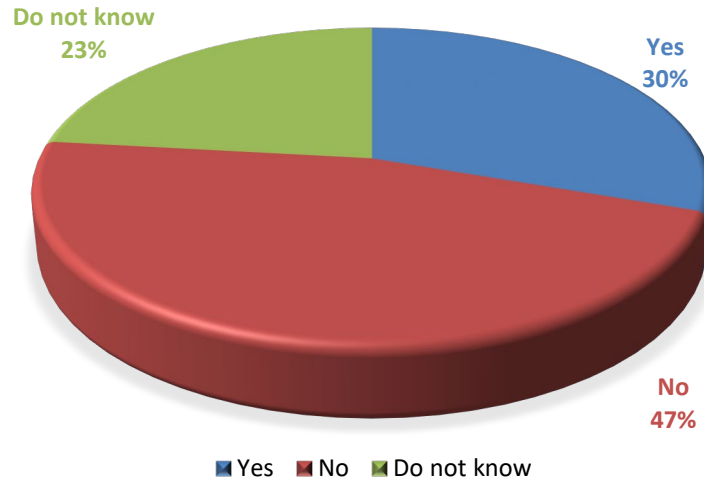
Less than one-third (30 percent) of agencies reported that they have FOIA performance measures for non-FOIA professionals, while nearly half (47 percent) reported that they do not. Almost one-quarter (23 percent) said that they did not know. A handful of agencies responded that they are working with or plan to work with their human resources offices to establish FOIA performance measure for non-FOIA professionals.

The reasons agencies cited for not having FOIA performance measures for non-FOIA professionals vary. Some agencies said that their FOIA programs are small enough that all

---

<sup>4</sup> The FOIA Improvement Act of 2016 amended Section 3102 of the Federal Records Act, 44 U.S.C. § 3102, to include a requirement that agencies establish "procedures for identifying records of general interest or use to the public that are appropriate for public disclosure, and for posting such records in a publicly accessible electronic format." This requirement is now included in 5 U.S.C. § 552(a)(2).

**FIGURE 1: 2018 RMSA RESPONSES TO "DO YOUR AGENCY'S EMPLOYEE PERFORMANCE WORK PLANS AND APPRAISALS INCLUDE FOIA PERFORMANCE MEASURES FOR NON-FOIA PROFESSIONALS TO ENSURE COMPLIANCE WITH THE REQUIREMENTS OF FOIA? "**



phases of the FOIA process, including searching for responsive records, are shared with a small group of FOIA professionals. Other agencies indicated that performance measures would not be appropriate because they receive too few requests a year or FOIA is a collateral duty for many employees.

**Observation:**

- Opportunities exist for agencies to include FOIA performance measures in all employee work plans and appraisals.

**Agency Procedures for Posting on FOIA Reading Rooms**

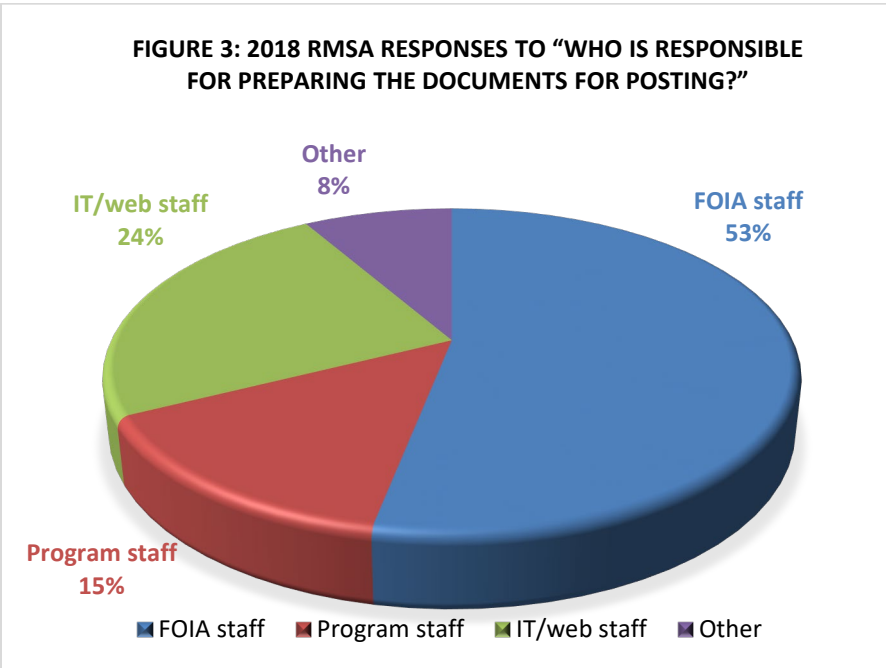
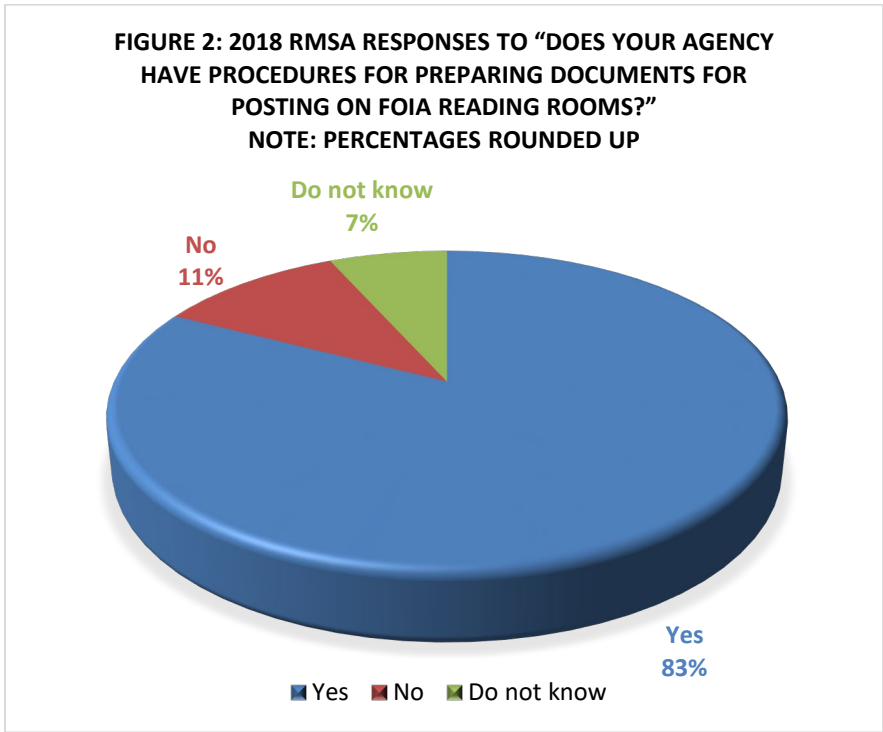
The majority of respondents (83 percent) said that their agencies have procedures for preparing documents for posting on FOIA reading rooms. Eleven percent responded that their agencies do not have such procedures, while an even smaller percentage (7 percent) said they did not know.<sup>5</sup>

OGIS often hears from agency FOIA professionals that the responsibility for posting documents in FOIA reading rooms falls on FOIA staff. The RMSA results confirm that with a little more than half (53 percent) saying that FOIA staff are responsible for posting. Almost a quarter (24 percent) responded that IT/web staff are responsible for posting, while program staff (24 percent)

---

<sup>5</sup> Percentages are rounded up and may equal more than 100 percent.

and other staff (8 percent) are responsible at some agencies. Some agencies responded that a combination of staff are responsible for posting.

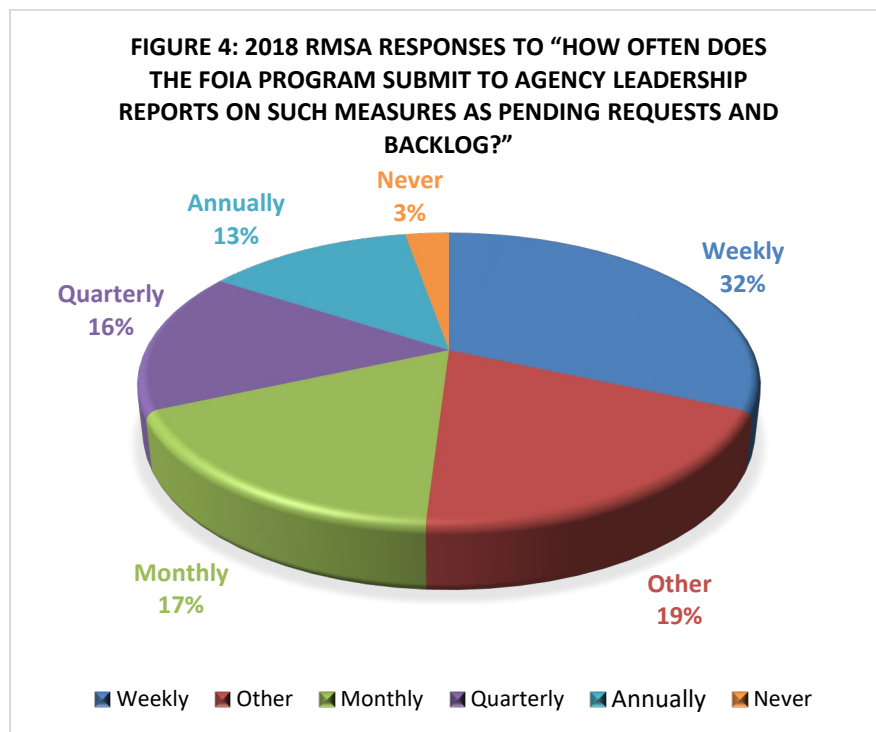


**Observations:**

- Agencies are generally complying with FOIA’s mandate to create procedures for posting documents on FOIA reading rooms.
- More than half of the survey respondents reported that the responsibility for preparing the documents for posting rests with the FOIA staff.

**Performance Management**

A majority of survey respondents (65 percent) said that their FOIA programs report to agency leadership at least quarterly. Of those, 32 percent report weekly and 17 percent report monthly. Nearly one in five agencies (19 percent) responded that they have less formal methods for informing agency leadership about the FOIA program’s performance measures, such as verbally during regular meetings; regularly posting reports to the agency’s FOIA web site; informing leadership when necessary; or upon request.



**Observation:**

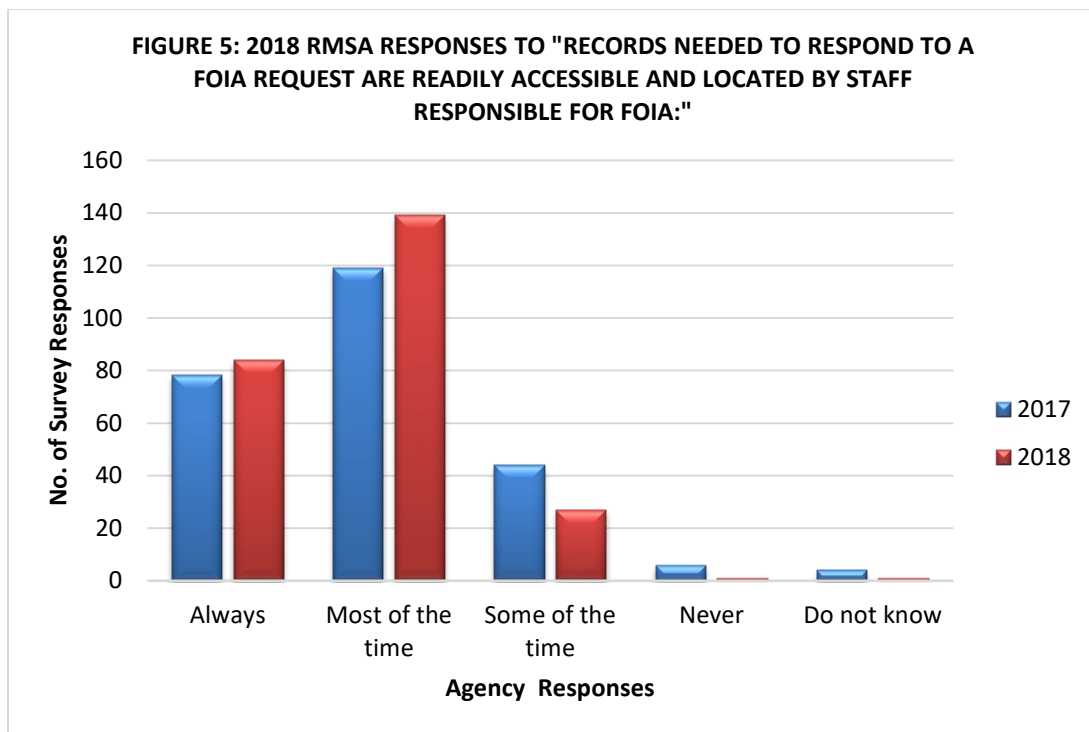
- Agencies are generally reporting on FOIA metrics to their FOIA leadership. OGIS has observed in assessing agency compliance that well-managed FOIA programs regularly report to their agency leaders on FOIA performance measures.

## FOIA Searches

There was a 13-percent increase between 2017 and 2018 in the number of agencies that say that they can access and locate records necessary to respond to FOIA requests “always” or “most of the time.” During the same period, the percentage of respondents who said they can access and locate records needed to respond to a FOIA request “some of the time” dropped from 18 percent to 11 percent. And the percentage who said that they can “never” access the necessary records or “do not know” dropped from 2 percent to 0 percent.

### **Observation:**

- For Calendar Year (CY) 2018, more agencies reported that they are able to access and locate records needed to respond to a request. A strong records management program—which allows agencies to find responsive records—is essential to a successful FOIA program.



## Communication

The FOIA Improvement Act of 2016 requires agencies to include in their response letters information about the services offered by the agency’s FOIA Public Liaison (FPL) and to alert requesters of OGIS’s dispute resolution services when there is an adverse determination and

when the agency needs more than 10 additional days to process a request due to unusual circumstances.<sup>6</sup>

The U.S. Department of Justice, Office of Information Policy (OIP) issued guidance directing agencies to notify requesters of OGIS's services at these two stages of the administrative process.<sup>7</sup> In addition, 2010 OIP guidance directed agencies to inform requesters in the agency's appeal response letters about the availability of OGIS's dispute resolution services as a non-exclusive alternative to litigation.<sup>8</sup> OGIS and OIP have posted model language agencies can use to satisfy the requirements.<sup>9</sup>

Before the law changed in 2016, 85 percent of agencies reported that they were alerting requesters of OGIS's dispute resolution services.

In 2017 and 2018, after the FOIA statute was amended, the RMSA asked agencies a more targeted question: "At what point in the FOIA process does your agency inform requesters of the Office of Government Information Services' (OGIS) dispute resolution services?" Respondents could check all options that applied:

- When there is an adverse determination
- When notifying the requester that the agency needs more than 10 additional days to process a request
- When responding to the requester's appeal
- Never
- Other, please explain

In the 2018 RMSA, respondents could also check "Do not know," a response selected by 3 percent of respondents.

---

<sup>6</sup> Agencies were already required to make their FPL available to requesters when invoking unusual circumstances to extend FOIA's time limits.

<sup>7</sup> See OIP Guidance: Guidance on the New Requirements for FOIA Response Letters, Including Affording Ninety Days to File an Administrative Appeal, and new Notification Requirement for Notices Extending FOIA's Time Limits Due to Unusual Circumstances (posted 7/16/2016) [https://www.justice.gov/oip/oip-guidance/new\\_requirements\\_for\\_FOIA\\_response\\_letters\\_from\\_FOIA\\_improvement\\_act\\_of\\_2016](https://www.justice.gov/oip/oip-guidance/new_requirements_for_FOIA_response_letters_from_FOIA_improvement_act_of_2016).

<sup>8</sup> See OIP Guidance: Notifying Requesters of the Mediation Services Offered by OGIS (posted 2010, updated 6/16/2015), <https://www.justice.gov/oip/blog/foia-post-2010-oip-guidance-notifying-requesters-mediation-services-offered-ogis>.

<sup>9</sup> See Office of Government Information Services, Model Language for Agency Response Letters, <https://www.archives.gov/ogis/mediation-program/model-letter-language> and OIP Guidance: Implementation Checklist and Sample Language for OIP Guidance on New Requirements for FOIA Response Letters and Notices Extending the FOIA's Time Limits Due to Unusual Circumstances (posted 7/16/2016, updated 8/10/2017), [https://www.justice.gov/oip/oip-guidance/implementation\\_checklist\\_and\\_sample\\_language\\_for\\_new\\_requirements\\_for\\_FOIA\\_response\\_letters](https://www.justice.gov/oip/oip-guidance/implementation_checklist_and_sample_language_for_new_requirements_for_FOIA_response_letters).



The number of “Other” respondents who said that they inform requesters of OGIS services in *all* responses, including when records are fully released, jumped 22 percent—from 50 in 2017 to 61 in 2018. OGIS’s increased caseload post-FOIA Improvement Act of 2016 indicates that agencies are generally informing requesters of OGIS services at points throughout the FOIA process. In FY 2018, which overlapped with the RMSA reporting period for nine months, OGIS received more than 4,600 requests for assistance from 54 agencies, including all 15 Cabinet-level departments, which receive the majority of the government’s FOIA requests.

The percentage of agencies responding to the RMSA that they never alerted requesters about OGIS’s dispute resolution services dropped to 1 percent in 2018. Those agencies that reported never alerting requesters of OGIS’s dispute resolution services generally processed few or no FOIA requests.

**Observation:**

- Agencies are generally informing requesters about OGIS’s services at various points in the FOIA process and those that do not do so appear to process very few or no FOIA requests.

**CONCLUSION**

The RMSA is a valuable tool that helps OGIS fulfill our statutory mission to “identify procedures and methods for improving compliance” under FOIA. We are pleased that in CY 2018, more agencies than in CY 2017 reported that they are able to access and locate records needed to respond to a request. These results are encouraging given that an agency’s inability to locate records causes delays in responding to FOIA requests and slows down the entire FOIA process. OGIS is also encouraged that agencies are generally reporting on FOIA metrics to their agency leadership, and that agencies are generally complying with FOIA’s mandate to create procedures for posting documents on FOIA reading rooms, baseline information that we will build upon in 2020, fulfilling a recommendation from the FOIA Advisory Committee. We are also pleased to have baseline information on FOIA performance measures in employee work plans and appraisals, another planned assessment that will help us fulfill a recommendation from the FOIA Advisory Committee.

**METHODOLOGY**

The self-assessment for 2018 began on March 11, 2019, and had a response deadline of April 19, 2019. The CRO’s office conducts the RMSA via an online survey tool that creates a unique link used to submit survey responses. Ninety-six percent of agencies which received the RMSA link completed this year’s assessment in accordance with NARA’s responsibility to report on the state of Federal records management. In CY 2017 and 2018, the RMSA response rate was 99 and 98 percent, respectively.

Survey respondents included records officers at all Cabinet-level departments, departmental components, and independent agencies. A few non-Executive Branch agencies that are not subject to FOIA voluntarily took part in the assessment which brings the total number of responses to FOIA questions to 255. CRO instructed agency Records Managers to consult with their agency FOIA Officers to answer the FOIA-related questions.

The full RMSA contains core and non-core questions. The core questions remain largely the same every year in order to track essential elements of a compliant records management program. As discussed in the “FOIA Searches” and “Communications” sections of this report, there were two core FOIA questions, allowing us to report on two-year trends:

Question 23: Records needed to respond to a FOIA request are readily accessible and located by staff responsible for FOIA:

- Always
- Most of the time
- Some of the time
- Never
- Do not know

Question 24: At what point in the FOIA process does your agency inform requesters of the Office of Government Information Services’ (OGIS) dispute resolution services? (Chose all that apply)

- When there is an adverse determination
- When notifying the requester that the agency needs more than 10 additional days to process a request
- When responding to the requester’s appeal
- Never
- Do not know
- Other, please explain

The remaining non-core FOIA questions were:

Question 25: How often does the FOIA program submit to agency leadership reports on such measures as pending requests and backlog?

- Annually
- Quarterly
- Monthly
- Weekly
- Never
- Other, please explain

Question 26: Do your agency's employee performance work plans and appraisals include FOIA performance measures for non-FOIA professionals to ensure compliance with the requirements of FOIA? (Note: The 2016-2018 term of the Freedom of Information Act Advisory Committee endorsed inclusion of FOIA performance standards in Federal employee evaluations and work plans government-wide.)

- Yes
- No, please explain
- Do not know

Question 27: Does your agency have procedures for preparing documents for posting on FOIA reading rooms? (Note: The FOIA Improvement Act of 2016 amended Section 3102 of the Federal Records Act, 44 U.S.C., to include a requirement that agencies establish "procedures for identifying records of general interest or use to the public that are appropriate for public disclosure, and for posting such records in a publicly accessible electronic format." This requirement is now included in 5 U.S.C. § 552(a)(2).)

- Yes
- No, please explain
- Do not know

Question 28: Who is responsible for preparing the documents for posting? (Choose all that apply)

- FOIA staff
- Program staff
- IT/web staff
- Other, please explain
- Do not know

The CRO posts the full results of RMSA surveys on this web page:

<https://www.archives.gov/records-mgmt/resources/self-assessment.html>.