

## **Recommendations for Making Government Information More Transparent, Useful and Accessible**

The following recommendations are in response to the Biden-Harris administration's request for input concerning how government information can be made more transparent, useful, and accessible in anticipation of an OSTP engagement session scheduled on November 29, 2022. The recommendations are intended to inform the development of the United States's Open Government National Action Plan, intended to support a more equitable, transparent, and accountable government.

That consultation concerns:

- Strengthening access to government information through the Freedom of Information Act.
- Creating better feedback loops between data practitioners and federal data stewards

### **Policy recommendation**

Agencies should set up a process to proactively disclose information that is of interest to the public on an ongoing basis. The FOIA, for example, contemplates both proactive and request-driven disclosures of information of public interest. To help prioritize, agencies should look at requests made through the Freedom of Information Act, via other request-based systems (i.e., specialized forms for a particular dataset or document), and information regularly disclosed by public affairs and congressional relations offices.

Categories of information to consider for proactive release include: commercial (business-related), current events (relevant to journalists), ethics (relevant to government watchdogs, such as lobbying, ethics waivers, etc.), agency operations, and datasets (paper versions are disclosed to the public but the underlying dataset must be FOIA'd).

On a regular basis, each agency should review its efforts to evaluate the effect of proactive disclosure and whether additional documents/datasets should be proactively disclosed.

### **Considerations for implementing this policy recommendation**

The following are four steps an agency could follow to identify and prioritize information of value to the public.

#### ***1.—Review how the agency already discloses information to the public.***

Agency information is made available to the public in many ways. Some examples include:

- As responses to FOIA requests
- As responses to specialized request forms
- Responses to media inquiries (by email, telephonically, and press advisories and releases)
- As letters or reports to Congress or OMB
- Information the agency is trying to place with media
- Information disclosed in reports (already online) that are not in machine-readable formats

There may be other ways as well.

**2.—Form an understanding of how each of these information request processes work and obtain a representative sample of the kinds of requests being answered.**

*FOIA.* Obtain the FOIA logs and randomly choose a significant number of requests (say 1000). Categorize each request based on the likely purpose for which it will be used: commercial, current events, ethics, agency operations, and datasets. Within each category, figure out whether the requests overlap a common data set or series of documents.<sup>1</sup>

*Responses to specialized request forms.* Create a list of the specialized information request forms that an agency uses to receive requests from the public. Determine the volume of requests received, on average, each year. For each form, figure out whether the information is pulled from a particular dataset or set of documents.<sup>2</sup>

*Responses to media inquiries.* Reach out to press office staff to see whether they keep a media log, which tracks who has called and what they've called about. If it exists, review a representative sample (pick a few random days) to see whether there is any commonality to the requests. Identify and list the most frequent requests. If not, look at releases and advisories pushed out by fax or email.

*Reports to Congress or OMB.* Make a list of all reports (including routine data pulls) to Congress and OMB. Are they already available online, but not in one central place? Are multiple years grouped together? Are they available through FOIA or published through some other means?<sup>3</sup>

*Information to be placed with the media.* Speak with press offices to get a sense of the kind of information commonly pushed to the public. Is it available online in one central place? How is the information presented?

*Information an agency disclosed but not in machine-friendly formats.* Create a list of reports available on the website. Identify whether they are only available as PDF, or are they available in other formats as well, such as csv or doc?<sup>4</sup>

**3.—Prioritize**

Looking at the information identified above, are there kinds of information that is requested again and again? If so, is it possible to disclose the underlying dataset or series of documents that underpin these common requests? Decide based upon the number of requests and the likelihood of use by the public.

Some clues to look for:

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<sup>1</sup> See, for example, Department of State FOIA Logs, <https://foia.state.gov/Search/Logs.aspx>.

<sup>2</sup> See, for example, privacy act requests from the National Archives for information regarding military service. <https://www.archives.gov/personnel-records-center/foia-info>

<sup>3</sup> See, for example, agency congressional budget justifications or reports required by Congress that are listed biannually by the Clerk of the House. Such a listing may be found in H. Doc. 114-4, <https://www.govinfo.gov/app/details/CDOC-114hdoc4/CDOC-114hdoc4-pt1>

<sup>4</sup> See, for example, annual reports on telework published only in PDF format at <https://telework.gov/reports-studies/reports-to-congress/annual-reports/>.

*FOIA.* Is information drawn from a certain source requested again and again? If so, is it possible to make the source information available to the public? If not, is it possible to create an expedited way of requesting that information? Or to pre-process that information as if it were already the subject of a FOIA request?

*Responses to specialized forms.* While being sure to include items from each category of information to consider for proactive disclosure, look at the most utilized special forms and determine whether it is possible to release the underlying information all at once.

*Responses to media inquiries.* Are there kinds of information requested again and again from press staff? Or types of requests that can be anticipated in the news cycle? If so, work with press staff to get ahead of the curve and disclose the information that is frequently requested.

*Reports to Congress or OMB.* If these reports routinely become available, publish them all online in a central place on the agency website as soon as they are issued. If there are concerns about redactions under FOIA, process through FOIA immediately prior to receiving a request, so they can be released at the same time or as close as possible to when the report is issued.

*Information to be placed with the media.* Publish the information as soon as possible.

*Information disclosed but not in machine-readable formats.* Work with offices and technology staff to make sure information published as a PDF is also published in other (open) formats as well, such as csv and doc.

#### **4.—Additional considerations for consideration of this policy recommendation**

(i) Talk to external and internal stakeholders. They know where the pain points are and can advise as to what would be most useful.

(ii) Look to see if an entity is broadly republishing the information the agency has provided. For example, some non-profit organizations will request an entire dataset and make it available all at once. In turn, many thousands of people will use that information. Instead of making the organization request that data, publish it online so it is available at once to everyone.

### **Additional policy recommendations**

(1) The Open Government Data Act, enacted as part of the *Foundations for Evidence-Based Policymaking Act of 2018*, requires the head of each agency to “develop and maintain a comprehensive data inventory that accounts for all data assets created by, collected by, under the control or direction of, or maintained” by an agency.<sup>5</sup> It further requires that the inventory, along with accompanying metadata, be made publicly available except in certain circumstances.

Are these inventories still being conducted? If so, where are they being published? Is it a central location for all the inventories? Are the contents of the inventories being compared against the information being requested by the public and other stakeholders to determine and address gaps in disclosure?

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<sup>5</sup> P.L. 115-435 § 3511.

(2) The government should examine its procurement of document management tools used to redact information prior to disclosure and used to add metadata to documents to comply with document accessibility as required under section 508. To the extent possible, technology procured should be aligned with facilitating meeting both of these needs at the time of creation. The federal government should work to procure appropriate technology that helps with review and disclosure and subsidize the cost of using that technology by agencies.

(3) In its role concerning forms submitted by agencies for review, OIRA should ensure the forms are designed to facilitate public disclosure with minimal effort on the part of the FOIA office reviewer. To that end:

- Forms should be designed with discrete sections that can always be publicly disclosed and sections that can never be disclosed. These sections should be contiguous and capable of being split using a tear sheet. This way it becomes possible for a FOIA reviewer to ignore those sections when reviewing a document for disclosure.
- Fields on forms, to the extent possible, should have forced choices so that a respondent can only provide pre-selected answers that in advance are known to be capable of being publicly disclosed without further review.
- An automatic review of documents for certain patterns of information that cannot be disclosed, such as social security numbers, should be automatically conducted and flagged for the reviewer.
- AI and similar technologies should be used to review completed forms to assess whether they can be released. After a certain level of efficiency is demonstrated for a type of form, human FOIA reviewers should only be responsible for spot checking.

(4) Reports and other documents routinely generated by agencies should follow a standard design that allows for automated redaction or disclosure of significant portions of those documents.