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November 2014

# FREEDOM OF INFORMATION ACT

## DHS Should Take Steps to Improve Cost Reporting and Eliminate Duplicate Processing

# GAO Highlights

Highlights of [GAO-15-82](#), a report to congressional requesters

## Why GAO Did This Study

FOIA requires federal agencies to provide the public with access to government information. In fiscal year 2013, DHS and its component agencies reported processing more than 200,000 FOIA requests, the most of any federal agency. At the end of fiscal year 2013, about half of all reported backlogged federal FOIA requests (about 50,000 of 95,000) belonged to DHS.

GAO was asked to review DHS's processing of FOIA requests. GAO's objectives were to determine (1) the responsibilities of and total costs incurred by DHS and selected components in managing and processing FOIA requests, and whether duplication exists; (2) actions DHS and selected components have taken to reduce FOIA backlogs and the results; and (3) the status of DHS's and selected components' efforts to acquire and implement automated systems for processing requests. GAO evaluated DHS's and five selected components' FOIA-related procedures, fiscal year 2013 cost data, and other documentation. The five components together received more than 90 percent of DHS's FOIA requests during fiscal year 2013. GAO also interviewed department and component agency officials.

## What GAO Recommends

GAO is recommending, among other things, that DHS improve the reporting of FOIA costs, eliminate duplicative processing, and direct components to implement recommended and required FOIA system capabilities. In written comments on a draft of the report, DHS agreed with the recommendations.

View [GAO-15-82](#). For more information, contact Valerie C. Melvin at (202) 512-6304 or [melvinv@gao.gov](mailto:melvinv@gao.gov).

November 2014

## FREEDOM OF INFORMATION ACT

### DHS Should Take Steps to Improve Cost Reporting and Eliminate Duplicate Processing

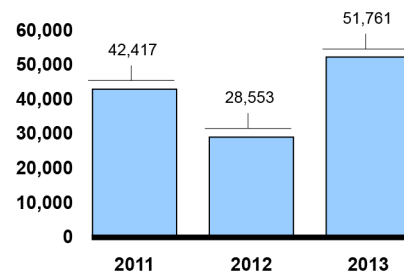
## What GAO Found

The Department of Homeland Security's (DHS) *Freedom of Information Act* (FOIA) processing responsibilities are split between the department's Privacy Office, which acts as its central FOIA office, and FOIA offices in its component agencies. The Privacy Office has a number of oversight and coordination functions, including developing policies to implement FOIA initiatives, providing training, and preparing annual reports. Meanwhile, components' FOIA offices are responsible for processing the vast majority of the requests received by the department, subject to regulations and policies issued by the Privacy Office. While components report FOIA processing costs to the Privacy Office, which then aggregates and reports them to the Department of Justice, reported costs are incomplete (for example, the costs do not reflect employee benefits or the salaries of staff outside the components' FOIA offices who retrieve requested documents), thus hindering accountability for total costs. Regarding duplication, GAO determined that certain immigration-related requests are processed twice by two different DHS components. The duplicate processing of such requests by the two components contributes to an increase in the time needed to respond to the requests.

In 2011, DHS established a goal of reducing backlogged FOIA requests by 15 percent each year, and its component agencies have taken actions toward this goal, including increasing staff, reporting and monitoring backlog information, providing training, and offering incentives to staff for increased productivity. Although there was initial progress by the end of fiscal year 2012, backlog numbers do not account for an estimated 11,000 improperly closed requests, and the number of backlogged requests increased in fiscal year 2013 to a level higher than 2011 (see figure).

**Department of Homeland Security Reported FOIA Backlogged Requests, Fiscal Years 2011 – 2013**

U.S. Department of Homeland Security Freedom of Information Act Backlogs



Source: FOIA.gov. | GAO-15-82

DHS and its components have implemented or are planning to implement various technology capabilities to support FOIA processing based on best practices and federal requirements. However, not all of these systems possess all capabilities recommended by federal guidance, such as online tracking and electronic redaction, or the required capabilities to accommodate individuals with disabilities. Adopting such system capabilities departmentwide could help DHS increase the efficiency of its FOIA processing.

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## Abbreviations

DHS	Department of Homeland Security
FOIA	Freedom of Information Act
Justice	Department of Justice
USCIS	U.S. Citizenship and Immigration Services
ICE	U.S. Immigration and Customs Enforcement
CBP	U.S. Customs and Border Protection
Coast Guard	U.S. Coast Guard
FEMA	Federal Emergency Management Agency

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November 19, 2014

The Honorable Michael T. McCaul  
Chairman  
Committee on Homeland Security  
House of Representatives

The Honorable Jeff Duncan  
Chairman  
Subcommittee on Oversight and Management Efficiency  
Committee on Homeland Security  
House of Representatives

The Freedom of Information Act<sup>1</sup> (FOIA) requires federal agencies to provide the public with access to government information on the basis of the principles of openness and accountability in government. Each year, federal agencies release information in response to hundreds of thousands of FOIA requests that contribute to the understanding of government actions, including the disclosure of waste, fraud, and abuse. The Department of Homeland Security (DHS) is one of the many agencies that respond to these requests. The department receives and processes requests for information related to immigration, border crossings, law enforcement, natural disasters, maritime accidents, and agency management, among other topics. This information is compiled and maintained throughout the department and its seven component agencies.

DHS has reported processing approximately 200,000 FOIA requests in fiscal year 2013—the most of any federal government agency. Moreover, requests have more than doubled since 2009, and it also has reported the largest backlog of unprocessed requests of any federal agency. At the end of fiscal year 2013, approximately half of all reported backlogged federal FOIA requests (about 50,000 of 95,000) belonged to DHS.

At your request, we conducted a study of DHS's processing of FOIA requests. Our objectives were to determine: (1) the responsibilities of, and total costs incurred by, DHS and selected components in managing and

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<sup>1</sup>5 U.S.C. § 552.

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processing FOIA requests, and whether any duplication exists; (2) actions DHS and the selected components have taken to reduce FOIA backlogs and the results of their actions; and (3) the status of DHS's and the selected components' efforts to acquire and implement automated systems for processing FOIA requests.

To address the study objectives, we reviewed the FOIA activities of the DHS Privacy Office (which serves as the department's central FOIA office); we also purposefully selected and reviewed the five DHS component agencies that, together, received more than 95 percent of all of the department's FOIA requests during fiscal year 2013. These selected component agencies are the U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), Federal Emergency Management Agency (FEMA), and U.S. Coast Guard (Coast Guard).

To determine the responsibilities of and costs incurred by DHS and the selected components in managing and processing FOIA requests, we evaluated the department's and components' FOIA policies, procedures, reports, and other documentation describing their responsibilities and management practices, and interviewed officials about their responsibilities. We also examined overall FOIA processing costs for fiscal year 2013, as reported by DHS annually to the Department of Justice (Justice),<sup>2</sup> and we reviewed detailed cost breakdowns used by the Privacy Office and the selected components to calculate total reported FOIA processing costs. We determined the categories of costs reported and compared them to the cost categories required by Justice and federal management cost accounting standards<sup>3</sup> to determine if all required cost elements were being reported. We examined steps taken by DHS and the selected components to assure their cost figures were reliable. We concluded that the cost data provided were not sufficiently reliable to determine DHS's total FOIA costs.

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<sup>2</sup>All federal agencies are required by law (5 U.S.C. § 552(e)), to report to Justice on their compliance with FOIA through the submission of an annual FOIA report. Department of Justice guidance also requires the submission of a chief FOIA officer report to Justice.

<sup>3</sup>Federal Accounting Standards Advisory Board, Statement of Federal Financial Accounting Standards 4: *Managerial Cost Accounting Standards and Concepts* (version 13, June 2014).

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To determine whether duplication exists in the department's and selected components' processing of FOIA requests, we examined policies and procedures, viewed demonstrations of how requests are processed, and interviewed Privacy Office and component agency officials regarding their processes for responding to a FOIA request. We evaluated the processes against recommended practices discussed in our previously issued reports that addressed duplication in federal government programs.<sup>4</sup>

To assess actions DHS and the selected components have taken to reduce their backlogged FOIA requests and the results of their actions, we reviewed backlog reduction goals and statistics. We also examined other relevant documents and interviewed agency officials to identify any specific actions being taken to reduce backlogged requests, identify outcomes associated with those actions, and ascertain any plans for addressing the backlogged requests.

To determine the status of the department's and the selected components' efforts to acquire and implement automated systems to support FOIA processing, we obtained and analyzed information, such as user manuals and screen prints, that described existing system capabilities, and viewed demonstrations of current systems being used to track and process requests. We compared the stated capabilities of these systems to relevant laws, guidance, and recommended best practices for using technology to improve efficiency in FOIA processing.<sup>5</sup> We used this analysis to assess the extent to which the Privacy Office's and selected components' processing systems included the recommended best practice capabilities. We also interviewed Privacy Office and component agency officials regarding current and planned system capabilities and reviewed documents describing components' plans to acquire new automated FOIA processing systems. Additional details on our objectives, scope, and methodology are included in appendix I.

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<sup>4</sup>GAO, *2013 Annual Report: Actions Needed to Reduce Fragmentation, Overlap, and Duplication and Achieve Other Financial Benefits*, [GAO-13-279SP](#) (Washington, D.C., Apr. 9, 2013) and *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, [GAO-11-318SP](#) (Washington, D.C., Mar. 1, 2011).

<sup>5</sup>Specifically, we used the *OPEN Government Act* (Pub. L. No. 110-175 (Dec. 31, 2007)) and best practices compiled by the National Archives and Records Administration's Office of Government Information Services, the Department of Commerce, and the Environmental Protection Agency.



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We conducted this performance audit from November 2013 to November 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

FOIA establishes a legal right of access to government information on the basis of the principles of openness and accountability in government. Before its enactment in 1966, an individual seeking access to federal records faced the burden of establishing a “need to know” before being granted the right to examine a federal record. FOIA established a “right to know” standard, under which an organization or person could receive access to information held by a federal agency without demonstrating a need or reason. The “right to know” standard shifted the burden of proof from the individual to a government agency and required the agency to provide proper justification when denying a request for access to a record.

Any “person,” defined broadly to include foreign nationals, corporations, and organizations, can file a FOIA request. For example, a foreign national or his/her lawyer can request immigration-related files, and a commercial requester, such as a data broker that files a request on behalf of another person, may request a copy of a government contract. In response, an agency is required to provide the relevant record(s) in any readily producible form or format specified by the requester (unless the record falls within a permitted exemption).<sup>6</sup>

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<sup>6</sup>Nine specific exemptions can be applied to withhold, for example, classified, confidential commercial, pre-decisional, privacy, and several types of law enforcement information.

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## FOIA Amendments and Guidance Called for Improvements in Agencies' FOIA Processing

The 1996 e-FOIA amendments,<sup>7</sup> among other things, sought to strengthen the requirement that federal agencies respond to a request in a timely manner and reduce their backlogged requests. In this regard, the amendments made a number of procedural changes, including providing a requester with an opportunity to limit the scope of the request so that it can be processed more quickly, and requiring agencies to determine within 20 working days (an increase from the previously established time frame of 10 days) whether a request would be fulfilled.<sup>8</sup> The amendments also authorized agencies to multi-track requests—that is, to process simple and complex requests concurrently on separate tracks to facilitate responding to a relatively simple request more quickly. In addition, the e-FOIA amendments encouraged online, public access to government information by requiring agencies to make specific types of records available in electronic form.

In a later effort to reduce agencies' backlogged FOIA requests, the President issued Executive Order 13392 in December 2005,<sup>9</sup> which set forth a directive for citizen-centered and results-oriented FOIA. In particular, the order directed agencies to provide a requester with courteous and appropriate service and ways to learn about the FOIA process, the status of the request, and the public availability of other agency records. The order also instructed agencies to process requests efficiently, achieve measurable process improvements (including a reduction in the backlog of overdue requests), and reform programs that were not producing the appropriate results.

Further, the order directed each agency to designate a senior official as the Chief FOIA Officer. This official is responsible for ensuring agency-wide compliance with the act by monitoring implementation throughout the agency; recommending changes in policies, practices, staffing, and funding; and reviewing and reporting on the agency's performance in implementing FOIA to agency heads and to Justice. (These are referred

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<sup>7</sup>*Electronic Freedom of Information Act Amendments of 1996*, Pub. L. No. 104-231 (Oct. 2, 1996).

<sup>8</sup>The typical 20-day time period may be extended to thirty days in unusual circumstances, such as when a request involves a voluminous amount of records or requires consultation with another agency.

<sup>9</sup>Executive Order 13392, *Improving Agency Disclosure of Information* (Washington, D.C.: Dec. 14, 2005).

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to as Chief FOIA Officer reports.) Justice, which has overall responsibility for overseeing federal FOIA activities, issued guidance in April 2006 to assist federal agencies in implementing the Executive Order's requirements for reviews and improvement plans. The guidance suggested several potential areas for agencies to consider when conducting a review, such as automated tracking of requests; automated processing and receipt of requests; electronic responses to requests; forms of communication with requesters; and systems for handling referrals to other agencies.

The *OPEN Government Act*,<sup>10</sup> which was enacted in 2007, also amended FOIA in several ways. For example, it placed the 2005 Executive Order's requirement for agencies to have Chief FOIA Officers in law. It also required agencies to include additional statistics on timeliness in their annual reports. In addition, the act called for agencies to establish a system to track the status of a request. Justice subsequently issued guidance on responding to the requirements of the act and directed agencies to omit from their FOIA statistics certain Privacy Act requests that had previously been included.

Additionally, in January 2009, the President issued two memoranda, "Transparency and Open Government"<sup>11</sup> and "Freedom of Information Act,"<sup>12</sup> both of which focused on increasing the amount of information made public by the government. In particular, the latter memorandum directed agencies to (1) adopt a presumption in favor of disclosure in all FOIA decisions, (2) take affirmative steps to make information public, and (3) use modern technology to do so. This echoed Congress' finding, in passing the *OPEN Government Act*, that FOIA established a "strong presumption in favor of disclosure."

Agencies, including DHS, are generally required to make a determination on a FOIA request within 20 working days. A request may be received in writing or by electronic means. Once received, the request goes through multiple phases, which include assigning a tracking number, searching for responsive records, processing records, and releasing records. Figure 1

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<sup>10</sup>*Openness Promotes Effectiveness in our National Government Act of 2007*, Pub. L. No. 110-175 (Dec. 31, 2007).

<sup>11</sup>Presidential Memorandum of Jan. 21, 2009, *Transparency and Open Government*.

<sup>12</sup>Presidential Memorandum of Jan. 21, 2009, *Freedom of Information Act*.

provides an overview of the process, from the receipt of a request through the release of records to the requester.

Figure 1: FOIA Process (simplified)



Source: GAO analysis of agency information. | GAO-15-82

As indicated, during the intake phase, a request is to be logged into the agency's FOIA system, and a tracking number is assigned. The request is then reviewed by FOIA staff to determine its scope and level of complexity.<sup>13</sup> The agency then typically sends a letter or e-mail to the requester acknowledging receipt of the request, with a unique tracking number that the requester can use to check the status of the request.

Next, FOIA staff begin the search to retrieve the responsive records by routing the request to the appropriate program office(s). This step may include searching and reviewing paper and electronic records from multiple locations and program offices.

<sup>13</sup>Factors that increase the complexity of a request include the volume of information involved, the number of offices that might have responsive documents, the extent to which the information is technical or difficult to understand, and the need to communicate with third parties, such as other agencies or owners of possible proprietary information.

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Agency staff then process the responsive records, which includes determining whether a portion or all of any record should be withheld based on statutory exemptions.<sup>14</sup> If a portion or all of any record is the responsibility of another agency, FOIA staff may consult with the other agency or may send (“refer”) the document(s) to that other agency for processing. After processing and redaction, a request is reviewed for errors and to ensure quality. The documents are then released to the requester, either electronically or by mail.

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## DHS and its Component Agencies Are Stewards of Many Areas of Government Information to Which the Public Seeks Access via FOIA

Created in 2003, DHS assumed control of about 209,000 civilian and military positions from 22 agencies and offices that specialize in one or more aspects of homeland security. As such, the department is charged with a wide expanse of operations affecting many aspects of federal service to the public. By the nature of its mission and operations, the department creates and has responsibility for vast and varied amounts of information covering, for example, immigration, border crossings, law enforcement, natural disasters, maritime accidents, and agency management.

According to the 2014 Chief FOIA Officer Report,<sup>15</sup> DHS’s organizational structure consists of 28 offices, directorates, and components. The departmental offices encompass core management and policy functions. Among these is the Privacy Office, which is tasked with preserving and enhancing privacy protections for all individuals and promoting transparency of the department’s operations. The Privacy Office serves as the department’s central FOIA office.

DHS also has seven operational components that are responsible for carrying out various missions. Among these components are the five selected for our study, as described here.

- **USCIS** grants immigration and citizenship benefits, promotes an awareness and understanding of citizenship, and ensures the integrity

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<sup>14</sup>Some FOIA requests are closed before reaching this stage, for example, if no responsive documents can be found, if all responsive documents originated with another agency and were referred to that agency for processing, or if, after being notified of fees, the requester is unwilling to pay the estimated fees.

<sup>15</sup>DHS, Privacy Office, *2014 Chief Freedom of Information Act Officer Report to the Attorney General of the United States*, (Washington, D.C.: March 2014).

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of the nation's immigration system. Its records include asylum application files and other immigration-related documents.

- **CBP** secures the border against transnational threats and facilitates trade and travel through actions that include enforcing federal laws and regulations relating to immigration, drug enforcement, and other matters. The agency maintains records related to agency operations, activities, and interactions.
- **ICE** promotes homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration. It maintains information related to the law enforcement records of immigrants and detainees, as well as information pertaining to human trafficking/smuggling, gangs, and arrest reports.
- **FEMA** supports citizens and first responders to ensure that they work together to build, sustain, and improve the capability to prepare for, protect against, respond to, recover from, and mitigate all hazards. The agency maintains records such as those pertaining to the National Flood Insurance Program, grants, and disaster relief, as well as records related to disaster response.
- **Coast Guard** leads federal agency maritime safety, security, and stewardship. It safeguards the flow of maritime commerce in and out of U.S. ports, protects the marine environment, defends U.S. borders against illicit activity, and rescues those in peril at sea. Its records include information related to Coast Guard veterans, maritime disasters, and oil spills such as Deepwater Horizon.

According to its 2014 Chief FOIA Officer Report, DHS and its component agencies reported that they processed 204,332 FOIA requests in fiscal year 2013,<sup>16</sup> the most of any federal government agency. The department has experienced an increase in requests received every year since 2009, and has also reported the largest backlog of unprocessed requests of any federal agency. Specifically, as shown in table 1, DHS experienced a 125 percent increase in FOIA requests received from fiscal year 2009 through fiscal year 2013. It experienced an 81 percent increase in backlogged

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<sup>16</sup>Due to double counting in certain cases when a request is processed by more than one component, the actual number of unique FOIA requests is lower by at least 28,000 requests.

requests from fiscal year 2012 to fiscal year 2013. At the end of fiscal year 2013, approximately half of all reported backlogged federal FOIA requests (about 50,000 of 95,000) belonged to DHS.

**Table 1: FOIA Requests and Backlogged Requests at the Department of Homeland Security, Fiscal Years 2009-2013**

Fiscal year	FOIA requests received	Backlogged requests
FY 2009	103,093	18,918
FY 2010	130,098	11,383
FY 2011	175,656	42,417
FY 2012	190,589	28,553
FY 2013	231,534	51,761

Source: GAO based on DHS-supplied data and <http://www.foia.gov>. | GAO-15-82

Our Previous Reports  
Have Highlighted DHS  
FOIA Processing  
Challenges

Since 2008, we have issued a number of reports that highlighted challenges impacting DHS’s processing of FOIA requests. For example, in that year,<sup>17</sup> we reported that, government-wide, the numbers of pending requests carried over from year to year had increased because of an increase in requests directed at DHS. In particular, we noted increases in the number of pending requests at USCIS, which accounted for about 89 percent of DHS’s total pending requests. We identified several factors that contributed to the requests remaining open and recommended that Justice provide additional guidance to agencies on tracking and reporting overdue requests and planning to meet future backlog goals. As we recommended, Justice subsequently developed and issued guidance on tracking and reporting backlogged requests.

Additionally, in 2009,<sup>18</sup> we reported that DHS had taken steps to enhance its FOIA program, but that opportunities existed for the department to improve the efficiency and cost-effectiveness of FOIA processing. Specifically, we noted that implementation of key practices, such as internal monitoring and oversight, component-specific training, online

<sup>17</sup>GAO, *Freedom of Information Act: Agencies Are Making Progress in Reducing Backlog, but Additional Guidance Is Needed*, [GAO-08-344](#) (Washington, D.C.: Mar. 14, 2008).

<sup>18</sup>GAO, *Freedom of Information Act: DHS Has Taken Steps to Enhance Its Program, but Opportunities Exist to Improve Efficiency and Cost-Effectiveness*, [GAO-09-260](#) (Washington, D.C.: Mar. 20, 2009).

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status-checking, and electronic dissemination of records, could facilitate the processing of information requests at a number of its major components. Accordingly, we recommended that key practices used by certain DHS components and other agencies be implemented more consistently across the department. DHS agreed with our recommendations and took steps to address them. For example, the department implemented electronic FOIA processing systems in certain components. Further, among the components, the Secret Service provided component-specific training on the processing of information pertaining to its unique mission.

Further, in 2012,<sup>19</sup> we pointed out that FOIA processing was decentralized at the component level within DHS and that different components' processing systems were unable to exchange data. We noted that the inability of these systems to electronically exchange data also complicated the process of compiling agencies' annual FOIA reports. As a result of analyzing data on backlogged FOIA requests within DHS, along with other agencies, we recommended that DHS and the other agencies improve their FOIA programs by reporting backlog status, redirecting resources, changing procedures, and negotiating to simplify requests. DHS concurred with our recommendations and stated that it was taking steps to address them by, for example, increasing staffing levels to help with processing FOIA requests.

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<sup>19</sup>GAO, *Freedom of Information Act: Additional Actions Can Strengthen Agency Efforts to Improve Management*, [GAO-12-828](#) (Washington, D.C.: July 2012).



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## DHS's FOIA Processing Responsibilities Are Decentralized, Its FOIA Regulation Is Not Updated, Its Cost Reporting Is Incomplete, and Processing Duplication Exists

Responsibility for processing FOIA requests is decentralized among DHS's Privacy Office and component agencies. In this regard, the Privacy Office—as the department's central FOIA office—has agency-wide responsibility for FOIA compliance and performance, to include developing policies to implement FOIA initiatives, providing training, and preparing required annual reports. In addition, each of the selected components has its own program and procedures for processing, tracking, and reporting FOIA activities. However, the Privacy Office has not updated the DHS FOIA regulation—a regulation required by the act—that establishes procedures intended to inform the public of its own and the components' FOIA operations. Further, while the selected components report their FOIA processing costs to the Privacy Office, which then aggregates this data, these reported costs are incomplete, thus hindering accountability for the total costs incurred by the department and the components in managing and processing FOIA requests. Also, duplication exists in the processing of certain requests for immigrant files that are handled by two of the selected components.

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## Privacy Office Carries Out DHS-wide FOIA Responsibilities; Selected Component Agencies Have Separate FOIA Program Responsibilities

The DHS Privacy Officer serves as the department's Chief FOIA Officer, and the Privacy Office is where programmatic oversight of department-wide FOIA operations is executed. In addition, this office has responsibility for processing FOIA requests submitted to the Office of the Secretary and eleven other headquarters offices.<sup>20</sup> In fiscal year 2013, the Privacy Office reported processing 840 requests for these offices.

As the central office tasked with overseeing the department's FOIA activities, the Privacy Office is responsible for coordinating and overseeing the components' FOIA operations, providing FOIA-related training, and preparing the required annual reports on the department's FOIA performance.

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<sup>20</sup>These eleven offices are Office of the Secretary, Citizenship and Immigration Services Ombudsman, Domestic Nuclear Detection Office, Office of the Executive Secretary, Office of Intergovernmental Affairs, Management Directorate, Office of Policy, Office of the General Counsel, Office of Health Affairs, Office of Legislative Affairs, and Office of Public Affairs.

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Toward this end, the office currently performs a number of oversight and coordination functions:

- Requests weekly and monthly reports by all components on their FOIA processing, including monthly statistics on the number of requests processed and backlogged. For example, it requires all components to provide a monthly report to the Privacy Office on processed and pending FOIA requests, the number of days to respond to a request, and the component's ten oldest FOIA requests, among other reporting requirements.
- Takes corrective measures to address components' actions. For example, in October 2012, the Privacy Office issued a memorandum to all components on sending a letter to a FOIA requester when the passage of time or a change in circumstance raises a question about whether the requester is still interested in obtaining the requested records.
- Provides FOIA training to new employees. In fiscal year 2013, the office conducted biweekly training on FOIA for approximately 200 new employees. Included in the training was a discussion of best practices for safeguarding personally identifiable information.
- Provides assistance by detailing staff to components as needed. For example, the Privacy Office temporarily assigned a member of its staff to ICE to assist with a particularly large request.
- Provides technical support to encourage the adoption of automated FOIA processing capabilities. For example, the office provided copies of FOIA processing software to various components at no cost in order to encourage adoption of a single FOIA processing application across DHS.
- Routes FOIA requests addressed generally to DHS to the appropriate component(s) and coordinates responses to some requests that involve multiple components.
- Coordinates department-level compliance with FOIA by developing and disseminating policies and guidance to implement the act. For example, in 2003, the office issued a directive on FOIA roles and responsibilities throughout the department. In addition, in May 2009, the DHS Chief FOIA Officer issued a memorandum to all component agencies and offices discussing presumption of disclosure and exemptions as set forth by the Attorney General's guidelines. Further

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in 2012, the office issued a memorandum on processing “misdirected” FOIA requests, emphasizing the importance of routing misdirected requests to the appropriate component as soon as possible.

Apart from the Privacy Office, each of the selected component agencies separately administers its own FOIA program—subject to regulations and policies issued by the Privacy Office/Chief FOIA Officer. Components’ FOIA programs are subject to the same laws, regulations, and Justice guidance as the department’s program, and typically perform the functions of any FOIA program—maintaining a FOIA library, making a determination on a request for a fee waiver, and referring other offices’ documents to the actual owner. However, they may have different operating procedures due, for example, to the type of documents they process, or their geographic dispersion. Each selected component has its own FOIA Officer, who is usually also the FOIA Public Liaison, and most maintain their own online FOIA library. The components have a few additional responsibilities as part of a larger organization, such as the requirement to report information to the Privacy Office, and the need to exchange electronic data smoothly with other DHS components.

From an operational standpoint, however, the components differ considerably in how they meet their responsibilities. As shown in table 2, the selected DHS components’ FOIA offices are responsible for processing different types of requests depending on their mission. They also vary considerably with regard to both the number of FOIA requests received and the number of staff who process them. For example, in fiscal year 2013, USCIS reported that it received approximately 133,000 FOIA requests, mostly for immigrants’ files, while FEMA reported that it received about 800 requests, often related to disasters.

**Table 2: Fiscal Year 2013 Reported Statistics for Selected Department of Homeland Security Component Agencies' FOIA Programs**

Component	Program office	Reported number of FOIA requests received	Common types of requests received	Full-time permanent FOIA staff	Total full-time equivalent staff that help process FOIA requests <sup>a</sup>
USCIS	National Records Center	132,797	Immigrants' files	201	227
CBP	Privacy and Diversity Office	41,381	Records of border crossings	34	50
ICE	Management and Administration Office	34,161	Certain documents in immigrant files, information on detainees, detention facilities, and Homeland Security investigations (e.g., drug and gun smuggling)	48	57
Coast Guard	Management Programs and Policy Division	3,468	Maritime casualty investigations and oil spills	12	41
FEMA	Records Management Disclosure Branch	798	Information on disasters, such as hurricanes or the Deepwater Horizon oil spill, grants, contracts, and individual assistance files	16	36

Source: DHS FOIA Annual Report and GAO based on DHS-supplied data. | GAO-15-82

<sup>a</sup>Total full-time equivalent staff include part-time employees who perform FOIA duties and full-time employees who perform FOIA duties less than 100 percent of the time. (Numbers are rounded).

## Privacy Office Has Not Updated its FOIA Regulation to Inform the Public of Its Operations

Agencies are required by FOIA to publish regulations that govern and help inform the public of their FOIA programs. These rules are to provide guidance on the procedures to be followed in making a FOIA request and on specific matters such as fees and expedited processing of requests. Toward this end, in January 2003, DHS issued an interim final regulation establishing its procedures for implementing FOIA. The regulation describes steps that individuals are required to follow in making requests, such as submitting a written request directly to the component that maintains the record. It also explains the department's processing of such requests, including charging fees for the requested records.<sup>21</sup>

However, since the department's regulation was issued in 2003, important changes have occurred in how DHS processes FOIA requests; yet, the regulation has not been updated to reflect those changes. For example, since the regulation was issued, amendments have been

<sup>21</sup>6 C.F.R. part 5.

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enacted by the *OPEN Government Act of 2007*. These amendments included a requirement for federal agencies to have FOIA public liaisons and placed a limitation on fees that agencies can charge electronic news media. In addition, the President's FOIA memorandum, *Transparency and Open Government*, as well as the Attorney General's FOIA guidelines of 2009, required that agencies take specific actions to ensure that the government is more transparent, participatory, and collaborative. Specifically, agencies were required to rapidly disclose information, increase opportunities for the public to participate in policymaking, and use innovative tools, methods, and systems to cooperate amongst themselves and across all levels of government.

The department has taken actions to implement these FOIA-related requirements. Specifically, it established a FOIA public liaison officer and issued a memo directing the department and its components to ensure transparency by adding categories of records<sup>22</sup> to be posted on component agencies' websites and linked to their respective electronic reading rooms. In addition, the department began accepting FOIA requests for records via e-mail. Nonetheless, while it has taken these actions, the department has not revised its regulation to address the role of the public liaison, the fee limitation for electronic news media requests, or the fact that the department accepts requests via e-mail.

Officials in the Privacy Office stated that a draft of a new regulation was due to be released for public comment during the summer of 2014, with a final updated regulation planned for the end of 2014. However, as of September 2014, the draft regulation had not been released.

Without an updated regulation reflecting changes in how it processes FOIA requests, DHS lacks an important mechanism for effectively facilitating public interaction with the department on the handling of FOIA requests. Moreover, the Privacy Office lacks current policies to consistently guide the components' efforts in effectively responding to such requests.

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<sup>22</sup>The categories of records are (1) historical daily schedules of the most senior agency officials; (2) executed contracts and grants; (3) management directives and instructions; (4) congressional correspondence under DHS control; (5) FOIA logs; and (6) any records released pursuant to FOIA requests that have been, or are likely to become, the subject of three or more requests.

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## Full FOIA Costs of DHS's Privacy Office and Selected Components are Unknown

Both Justice and federal cost accounting standards require federal agencies to report on specific categories of FOIA-related costs. Specifically, as part of the annual guidance that it has issued on preparing annual FOIA reports, Justice requires agencies to report processing costs and litigation-related costs.<sup>23</sup> According to Justice, FOIA processing costs include the sum of all costs expended by the agency for processing the initial FOIA request and any administrative appeals, including salaries of FOIA personnel, overhead, and any other FOIA-related expenses. Justice also has developed a reporting tool—the DOJ Annual FOIA Report Tool—that agencies can use to report their FOIA activities.

In addition, the federal management cost accounting standards<sup>24</sup> require agencies to report both direct and indirect costs to provide reliable and timely information on the full cost of federal programs. Direct costs include:

- salaries and other benefits for employees who work directly on the output,
- materials and supplies used in the work,
- various costs associated with office space, equipment, facilities, and utilities, and
- costs of goods or services received from other segments or entities.

Indirect costs are for resources that are jointly or commonly used to produce two or more types of outputs but are not specifically identifiable with any of the outputs. Typical examples of indirect costs include:

- costs of general administrative services,
- general technical support (e.g., information technology services such as telecommunications),
- security, and
- rent and operating and maintenance costs for buildings, equipment, and utilities.

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<sup>23</sup>Department of Justice, *Handbook for Agency Annual Freedom of Information Act Reports: Guidance for FOIA Professionals on Proper Tracking and Detailed Instructions for Preparing the Annual Report*, (Washington, D.C.: Oct. 29, 2013).

<sup>24</sup>Federal Accounting Standards Advisory Board, Statement of Federal Financial Accounting Standards 4, *Managerial Cost Accounting Standards and Concepts* (version 13, June 2014).

However, neither the selected components, nor the Privacy Office, which collects and aggregates data on the department's FOIA costs, report all categories of costs required by Justice and federal financial accounting standards. Further, data submitted by the selected components were often incomplete. Specifically, while the Privacy Office and the selected components all reported the salaries of FOIA office staff as input to the department's FOIA annual report for fiscal year 2013, most did not report or did not fully report costs for other categories, including employee benefits, non-personnel direct costs, indirect costs, and salaries of staff outside the components' FOIA offices who retrieve requested documents. Table 3 summarizes the extent to which costs were reported by the Privacy Office and the selected components in the department's 2013 FOIA annual report.

**Table 3: Cost Categories Reported by the Privacy Office and Selected Components for the DHS 2013 FOIA Annual Report**

Component	Salaries	Employee benefits	Non-personnel direct costs	Indirect costs	Costs for offices other than the FOIA office <sup>a</sup>
Privacy	●	○	●	● <sup>b</sup>	○
CBP	●	○	●	○	●
Coast Guard	●	○	○	○	● <sup>c</sup>
FEMA	●	○	○	○	● <sup>c</sup>
ICE	○	○	○	●	○
USCIS	●	●	●	○	○ <sup>d</sup>

Source: GAO analysis of data provided by DHS. | GAO-15-82.

Note: ●=yes; ●=partially (only some of the data are reported or reported data are not accurate); ○=no

<sup>a</sup>Since program documents are not typically held by the FOIA office, program offices incur costs in searching for and retrieving documents.

<sup>b</sup>Although the Privacy Office reported indirect costs, they were unable to determine what proportion of these costs was attributable to their FOIA activities.

<sup>c</sup>Coast Guard and FEMA cost data were not deemed reliable because they were incomplete and/or inaccurate.

<sup>d</sup>Most of USCIS's requests are for immigrant files, which are searched in a central system, but other requests are sent to program offices for search and retrieval of responsive documents.

As reflected in the table, when submitting data for the 2013 FOIA annual report, the Privacy Office and all five selected components reported all or a portion of salary costs incurred. However, two of the six reported all or a portion of their costs incurred for employee benefits; three reported all or a portion of their direct non-personnel costs; two reported all or a portion of their indirect costs; and four reported all or a portion of costs for offices other than the FOIA office.

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Officials in the Privacy Office and components attributed the underreporting of costs to two factors: a lack of detailed cost guidance and difficulty in capturing all personnel costs associated with the processing of FOIA requests. In this regard, officials in the Privacy Office stated that they do not have specific guidance on determining FOIA costs. They stated that the Justice guidance is high-level and does not reflect all areas of cost. Further, the officials stated that DHS does not have a specific form or template specifying required cost categories to aid the components in identifying and collecting the relevant cost data.

Privacy Office and component officials stated that, when processing a FOIA request, substantial costs may be incurred by offices other than the components' FOIA offices, and these costs are difficult to capture. In particular, they stated that, when documents responding to a FOIA request must be retrieved by an office other than the component's central FOIA office, it can be difficult to determine the cost of search and retrieval activities performed by staff in that other office.

Further, officials at CBP, Coast Guard, FEMA, ICE, and Privacy said that costs for their FOIA operations are being underreported. They stated that it is difficult to collect data on costs incurred by other offices that support their FOIA operations. According to the FOIA Officer at ICE, although a form exists for that component's program offices to account for hours spent on FOIA activities, ICE did not report this information to the Privacy Office because ICE considers other FOIA activities to be a higher priority.

Until DHS takes steps to improve its reporting of costs for its FOIA operations, such as by providing components with guidance on reporting costs, the department will lack critical information for effectively managing its FOIA operations, and that is needed to inform Congress' oversight of the department's efforts.

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## Duplication Exists in Certain Components' Processing of Immigration Files

Our work<sup>25</sup> has noted that duplication exists when two or more agencies or programs are engaged in the same activities or provide the same services to the same beneficiaries. Among the most frequent FOIA requests made to DHS are those for immigration files. These files usually contain various types of information pertaining to immigrants, including

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<sup>25</sup> [GAO-13-279SP](#), [GAO-11-318SP](#).



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asylum applications, law enforcement records, and border crossing documents. As such, they may contain information and records that are generated by various DHS components or other agencies.

Within DHS, three components—USCIS, CBP, and ICE—create most of the documents included in immigration files. USCIS is the custodian of the files, and all FOIA requests for such files are either initiated with, or referred to, this component for processing. Specifically, to process a FOIA request for an immigration file, the USCIS staff to whom the request is assigned first manually enters the requester's data, such as a name and address, into USCIS's FOIA system to establish a record of the request. Next, the staff retrieves and scans the documents in the requested file and reviews the documents. If all of the documents were generated by USCIS, the staff makes redactions as needed, sends the documents to the requester, and closes out the request.

Further, if the FOIA request covers files containing documents generated by CBP, then USCIS is able to process the request on the basis of an agreement to that effect with CBP. By having USCIS process such requests for CBP documents, the two components avoid duplication in their response to a FOIA request.

On the other hand, USCIS and ICE do not have such an agreement for documents generated by ICE. Thus, the USCIS staff is to identify any such documents and make them available to ICE's FOIA staff for their separate processing.<sup>26</sup> In doing so, USCIS and ICE currently engage in duplicative processing of FOIA requests for those immigration files containing documents related to law enforcement activities that were generated by ICE.<sup>27</sup> Specifically, to facilitate ICE's review of such files, USCIS staff transfer copies of the ICE-generated documents to a temporary electronic storage drive that USCIS maintains. According to USCIS officials, ICE has been granted access to this electronic storage drive so that it can retrieve files containing the documents that it generates. ICE retrieves the documents, and the ICE staff then re-enters

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<sup>26</sup>Where applicable, USCIS also refers the immigration file documents to other agencies, such as the Department of State or Federal Bureau of Investigation, for further processing.

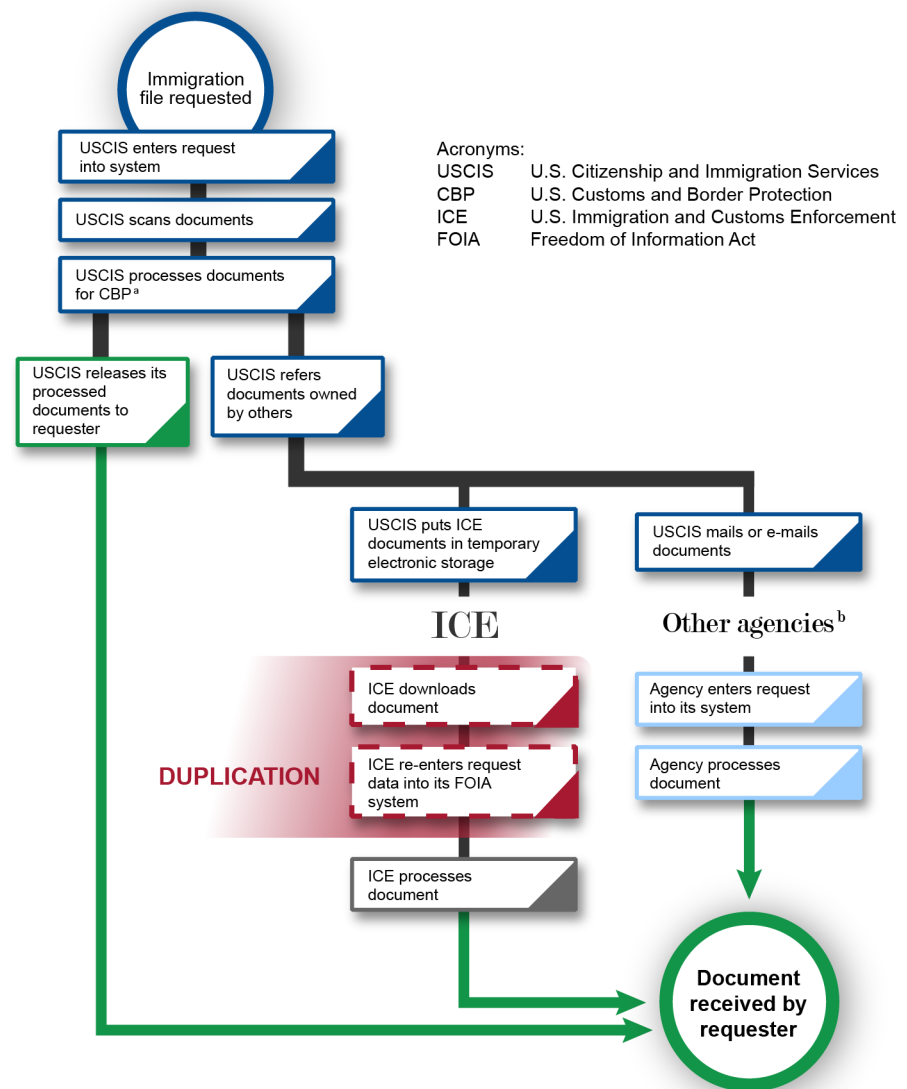
<sup>27</sup>These files, which mostly consist of paper documents, contain information regarding an individual's contacts with the U.S. immigration and inspection process—for example, naturalization certificates, records of border crossings, and reports of arrests or investigations.

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the data to create a new FOIA request in ICE's FOIA processing system. The staff then proceeds with processing the requested documents, and releases them to the requester—in essence, undertaking a new, and duplicate, effort to respond to the FOIA request.

Figure 2 depicts the duplication that occurs in USCIS's and ICE's downloading and re-entering of data to respond to FOIA requests for immigration files.

**Figure 2: Referral Process for Documents in an Immigration File**



Source: GAO analysis of U.S. Department of Homeland Security data. | GAO-15-82

<sup>a</sup>USCIS processes all CBP documents in the file under a service level agreement.

<sup>b</sup>Other agencies may include the Department of State, the Federal Bureau of Investigation, and the Federal Bureau of Prisons.

In prior years, up until April 2012, the two components had an agreement whereby USCIS processed ICE's documents contained in an immigration file. However, the components' officials stated that, since that agreement

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ended, the components have not made plans to enter into another such agreement. According to ICE's FOIA Officer, USCIS's processing of ICE's documents in immigration files was viewed as being too costly. Nonetheless, while there would be costs associated with USCIS processing ICE's documents in immigration files, the potential exists for additional costs to be incurred in the continued duplicate processing of such files.

The absence of an agreement between USCIS and ICE regarding the handling of FOIA cases contributes to the duplicate processing of the immigration files. Further, the duplicate processing of a single FOIA request by USCIS and ICE staff contributes to an increase in the time needed to respond to a FOIA request for immigration files. Because USCIS does not send the immigration file to ICE until it has completed its own processing of the relevant documents—which, according to USCIS, takes on average 20 working days—ICE usually does not receive the file to begin its own processing until the 20-day time frame for responding to a request has passed.<sup>28</sup>

Re-establishing an agreement that allows USCIS to process ICE-generated documents included in requests for immigration files, to the extent that the benefits of doing so would exceed the cost, could enable the two components to eliminate duplication in their processes for responding to such a request. Further, it could help reduce the time needed by these components in responding to a request.

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## DHS and Selected Components Have Taken Actions to Reduce Backlogged Requests, with Varying Success

The 2009 OMB *Open Government Directive* required all federal agencies with significant pending backlogs to reduce the number of their backlogged FOIA requests by at least 10 percent per year. The June 2011 DHS *Open Government Plan 2.0* further directed the department and its components to reduce the FOIA backlog by 15 percent per year.

Toward this end, officials in DHS's Privacy Office and the selected components identified various actions that they have taken since 2011 to reduce the number of their backlogged requests. With these actions, USCIS reduced its backlog consistently from 2011 through 2013. FEMA

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<sup>28</sup>The average time for USCIS to close a request as of fiscal year 2013 was 19.73 days, while the average time for ICE to close a request was 52.79 days.

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had a lower backlog in 2012, but an overall increase by 2013, and the Privacy Office and other selected components' backlogs increased. Specifically, there was a total of about 41,000 backlogged requests in fiscal year 2011 and about 47,000 in fiscal year 2013. The number of requests received had increased from about 170,000 requests in 2011 to about 210,000 in 2013, and the number processed increased from about 140,000 in 2011 to about 190,000 in 2013. Agency officials reported that the number of requests received had increased and the increase had contributed to their backlog.

**Privacy Office.** According to its officials, the Privacy Office holds regularly scheduled production meetings, at which the FOIA Production Manager reviews all pending cases, and weekly staff meetings where roadblocks to closing backlogged requests are discussed. Further, the FOIA Production Manager stated that weekly and, in some cases, daily production reports are received from all processing staff. However, despite these efforts, the number of backlogged requests grew from 4 in 2011 to 20 in 2013. Privacy Office officials attributed the backlog growth to an increase in the number of offices for which the Privacy Office processes FOIA requests. In 2013, the office added 3 additional headquarters offices to those for which it processes requests and inherited their backlogs.

**USCIS.** To reduce the number of backlogged requests, USCIS increased the number of its full-time FOIA staff from 188 to 201, and the number of its total full-time equivalent staff from 195 to 227 from 2011 through 2013. Further, to reduce the backlog, the agency used temporary assignments of contractor staff; it also conducted a Lean Six Sigma project<sup>29</sup> to improve processing throughput. The effort was successful, resulting in an increase in average monthly cases closed from 7,300 to 10,800. Specific actions taken under this initiative included:

- offering awards to staff for increased production;
- establishing minimum page count standards for processors at different grade levels;
- creating a GS-12 team leader position for high-performing staff; and
- enhancing communication and team development through monthly development sessions and leadership development.

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<sup>29</sup>Lean Six Sigma is a set of techniques and tools for process improvement.

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Lastly, according to USCIS officials, telework was expanded to 2 days a week, leading to increased productivity among staff who telework. As a result of these efforts, USCIS reported that it had succeeded in reducing its backlogged requests from 35,780 in 2011 to 3,394 in 2013.

**CBP.** To assist with reducing its backlog, CBP developed a management plan for fiscal years 2013-2014 that included moving the FOIA function organizationally from its Office of International Trade to the Privacy and Diversity group; hiring new permanent staff to help process requests; using temporary staff; and extending the agreement that allows USCIS to process its documents. According to agency officials, the new organizational placement has enabled the FOIA office to get more management attention and better address issues related to its FOIA operations.

Nonetheless, CBP experienced a large increase in the number of its backlogged requests from fiscal year 2011 through fiscal year 2013—from 4,356 requests to 37,848 requests. According to CBP officials, two problems, in particular, contributed to the higher numbers. First, approximately 11,000 FOIA cases that were improperly closed in 2012 had to be reopened and reprocessed. Second, after its reorganization, a new manager found a stack of boxes containing 12,000 paper requests from 2012 that had never been entered into their processing system. The officials stated that CBP subsequently cleared all of these requests.

**ICE.** In April 2012, ICE opened a new office in Florida to process referrals from USCIS. It also trained 20 temporary staff to help process the backlogged requests. Further, in April 2013, the agency engaged a contractor to process backlogged requests. Lastly, the agency developed performance work plans for staff, which specified the number of FOIA requests or document pages that staff should process weekly.

Even with these steps, however, ICE's backlog grew from 18 requests in fiscal year 2011 to 4,714 in 2013. Officials attributed this increase, in part, to increased public interest due to immigration reform, increases in the complexity of requests received, and the expiration of its agreement with USCIS to process ICE documents contained in immigration files.

**FEMA.** During its “non-disaster season” (February to May 2014), FEMA used 10 staff redeployed from other areas in the agency to help process its FOIA backlog. The staff received 2 weeks of training and closed 56 cases. FEMA also received assistance from the Privacy Office to process one case with more than 4 million pages of documents.

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Nonetheless, FEMA had a backlog of 485 requests in 2011 and 496 requests in 2013. These numbers are relatively high compared to the number of requests—about 800—that the agency received in 2013. In the 2014 Chief FOIA officer report, FEMA officials cited these factors impacting their ability to address the backlog: a loss of experienced FOIA professionals, difficulty in replacing these staff, and the need to process the one particularly voluminous request that it received.

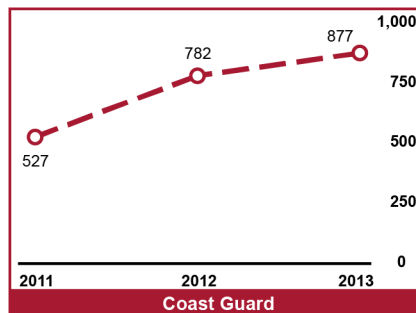
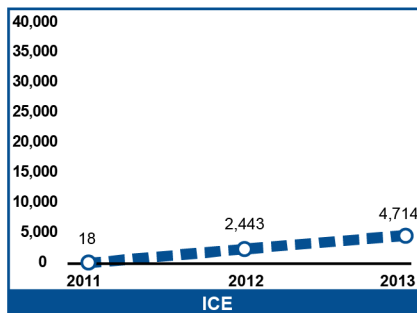
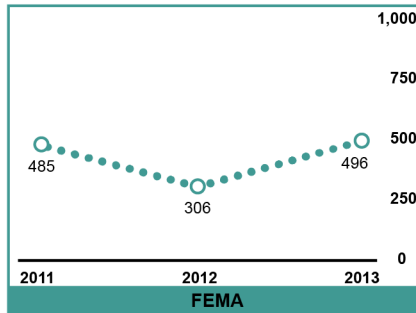
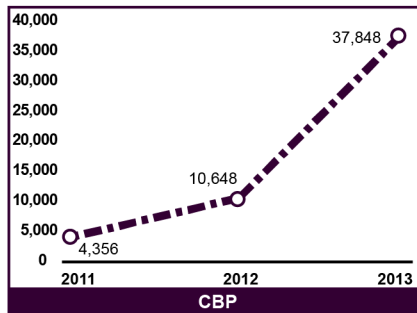
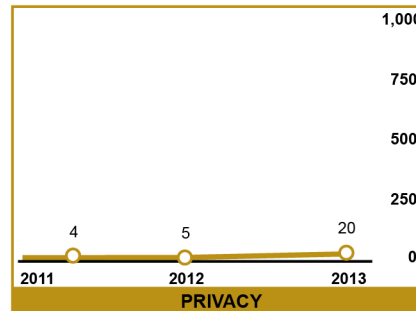
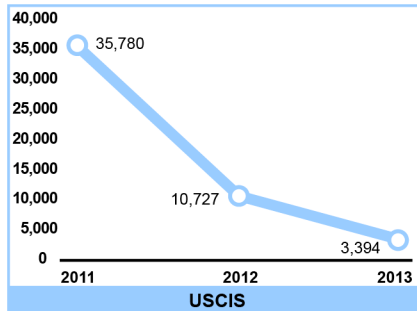
**Coast Guard.** Officials from the Coast Guard told us that they had attempted to reduce their backlog by sending reminders to program offices about open FOIA requests. Specifically, bi-monthly reports are sent to their field units as a reminder to account for their efforts to reduce their backlog.

However, Coast Guard's backlog increased from 527 in fiscal year 2011 to 877 in fiscal year 2013. In the 2014 Chief FOIA officer report, Coast Guard officials reported that factors impacting their ability to reduce the backlog included a lack of full-time professional FOIA staff, which results in reliance on part-time military staff who process FOIA requests as a collateral duty, may not be trained, and rotate frequently. The consequence, according to the FOIA office, is confusion, delays, backlogged requests, and errors. The Coast Guard also attributed inability to reduce its backlog to an increase in the complexity of the requests it received.

Figure 3 shows changes in the numbers of backlogged requests for the Privacy Office and the selected components from fiscal year 2011 through fiscal year 2013.

**Figure 3: Number of Reported Backlogged FOIA Requests for the Privacy Office and Selected Components, Fiscal Years 2011-2013**

Number of Backlogged Freedom of Information Act Requests



- |   |   |  |                                     |
|---|---|--|-------------------------------------|
| <span style="color: lightblue;">—●—</span> USCIS    | U.S. Citizenship and Immigration Services | <span style="color: gold;">—●—</span> PRIVACY            | Privacy Office                      |
| <span style="color: purple;">- - -●- - -</span> CBP | U.S. Customs and Border Protection        | <span style="color: teal;">...●...</span> FEMA           | Federal Emergency Management Agency |
| <span style="color: blue;">- - -●- - -</span> ICE   | U.S. Immigration and Customs Enforcement  | <span style="color: red;">- - -●- - -</span> Coast Guard | U.S. Coast Guard                    |

Source: GAO analysis of U.S. Department of Homeland Security data. | GAO-15-82

Note: CBP's data for 2012 does not account for about 11,000 requests that were improperly closed and should have been listed as backlogged.



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## DHS and Selected Components Have Implemented Automated Systems to Process FOIA Requests, but Systems Lack Recommended Capabilities

Various FOIA amendments and guidance call for agencies such as DHS to use electronic systems to improve FOIA processing. In particular, the *OPEN Government Act of 2007* amended FOIA to require that federal agencies establish a system to provide individualized tracking numbers for requests that will take longer than 10 days to process and establish telephone or Internet service to allow requesters to track the status of their request. Further, the President's January 2009 "Freedom of Information Act" memo instructs agencies to use modern technology to inform citizens about what is known and done by their government.

Beyond these requirements, a select group of federal agencies have collectively identified capabilities that they consider to be best practices for FOIA processing. Specifically, in conjunction with the Department of Commerce and the Environmental Protection Agency, the National Archives and Records Administration's Office of Government Information Services identified 13 electronic system capabilities that can enhance FOIA processing:

- using a single, component-wide system for tracking requests;
- accepting the request online, either through e-mail or an online request form;
- assigning the request tracking number and tracking the status of the request electronically;
- multi-tracking a request electronically;<sup>30</sup>
- routing a request to the responsible office electronically;
- storing and routing responsive records to the appropriate office electronically;
- redacting responsive records with appropriate exemptions applied electronically;
- calculating and recording processing fees electronically;
- allowing supervisors to review the case file to approve redactions and fee calculations for processing electronically;
- generating system correspondence, such as an e-mail or letter, with a requester;
- allowing a requester the ability to track the status of the request electronically;
- tracking an appeal electronically; and

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<sup>30</sup>Multi-tracking a request requires a FOIA processor to determine if a request is simple, complex, or expedited.

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- generating periodic reporting statistics electronically, such as monthly backlog and annual report data used to develop reports.

Additionally, in identifying the requirements for a multiagency FOIA portal, Justice and the Environmental Protection Agency determined that the ability to search for responsive records online is a high-level requirement for FOIA processing systems.

Lastly, FOIA processing systems, like all federal electronic information technology systems, are to comply with the requirements of Section 508 of the *Rehabilitation Act* (as amended). This act requires federal agencies to make their electronic information accessible to people with disabilities.<sup>31</sup>

In order to facilitate the implementation of these capabilities and requirements, DHS and its component agencies have acquired and are using various automated systems to assist with tracking and processing FOIA requests. For example, the Privacy Office and two of the selected components are using FOIAXpress, a commercial off-the-shelf FOIA case processing system, while one component is using workflow processing software that it developed in-house, called the FOIA/Privacy Act Information Processing System. The automated systems being used by the Privacy Office and the selected component agencies are described in table 4.

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<sup>31</sup>29 U.S.C. § 794d.

**Table 4: Automated Systems Used to Process FOIA Requests by Selected Component Agencies**

Component	FOIA system	Description of system
Privacy	FOIAXpress	Commercial off-the-shelf software specifically designed to automate FOIA case processing.
USCIS	FOIA/Privacy Act Information Processing System	Custom software developed to provide workflow processing for the life of a FOIA request.
CBP	FOIAOnline	Multi-agency Web application developed by a group of federal government agencies that enables agencies to receive, manage, track, and respond to a FOIA request.
ICE	FOIAXpress	Commercial off-the-shelf software specifically designed to automate FOIA case processing.
	FileMaker Pro <sup>a</sup>	Custom software developed specifically for ICE for FOIA request processing.
Coast Guard	Excel <sup>b</sup>	Electronic spreadsheet used to manage and track FOIA requests.
FEMA	FOIAXpress	Commercial off-the-shelf software specifically designed to automate FOIA case processing.

Source: GAO based on agency-supplied data , I GAO-15-82.

<sup>a</sup>While ICE has transitioned to FOIAXpress for new FOIA requests, it is still using FileMaker Pro to close outstanding FOIA requests during the transition.

<sup>b</sup>Coast Guard told us that they planned to transition to FOIAXpress by October 2014.

The systems being used by the DHS Privacy Office and selected components vary in the extent to which they include the capabilities recommended by the Department of Commerce, the Environmental Protection Agency, and the National Archives and Records Administration to enhance FOIA processing and address Section 508 requirements. Specifically, the Privacy Office and three selected components (CBP, FEMA, and ICE) have acquired systems that encompass all the recommended and required capabilities. One component, USCIS, has acquired a system that meets 13 of the capabilities, partially meets 1 capability, and does not meet 1 capability. The remaining agency, the Coast Guard, has not implemented most of the capabilities (12 of 15). Table 5 shows the extent to which the Privacy Office's and selected components' processing systems include the recommended and required capabilities.

**Table 5: Extent to Which Selected FOIA Processing Systems Implement Recommended and Required Capabilities**

Technology capabilities	CBP	Coast Guard	Privacy Office	FEMA	ICE <sup>a</sup>	USCIS
Single tracking system	•	•	•	•	•	•
Accept request online	•	•	•	•	•	•
Assign request tracking number and track status	•	•	•	•	•	•
Track appeals electronically	•	○	•	•	•	•
Generate periodic report statistics (annual report and monthly backlog statistics)	•	○	•	•	•	•
Route request to responsible office	•	○	•	•	•	•
Electronic redaction capabilities	•	○	•	•	•	•
Calculate and record processing fees	•	○	•	•	•	•
Requester ability to track status online	•	○	•	•	•	•
Search capabilities for responsive records	•	○	•	•	•	•
Review the case file to approve redactions and fee calculations	•	○	•	•	•	•
Ability to multitrack requests (simple, complex, expedited)	•	○	•	•	•	•
Store and route electronic records (to the appropriate office)	•	○	•	•	•	•
System-generated correspondence with requesters (such as emails or letters)	•	○	•	•	•	◐
Section 508 compliance	•	○	•	•	•	○

Source: GAO analysis of data provided by DHS. | GAO-15-82.

Notes: •=yes; ◐=partially; ○=no

<sup>a</sup>This information is for FOIAXpress, although ICE has stated that it will also still use FileMaker Pro for a limited time.

According to Privacy Office officials, DHS has not required the use of a standardized FOIA processing system, although 3 of the 5 selected components currently use the same system. They stated that the component agencies have acquired specific systems based on their individual needs. USCIS officials stated, for example, that their current system—the FOIA/Privacy Act Information Processing System—has been developed to meet that component’s specific needs. The officials added that they have no plans to convert to another FOIA processing system or make enhancements to the current system to fully address all required and recommended capabilities. As shown in table 5, the current system does not have the capability to e-mail correspondence to a requester. In addition, USCIS has not ensured that its system includes capabilities that make it compliant with requirements of Section 508 of the *Rehabilitation Act* (as amended).

Coast Guard officials stated, as of September 2014, that they were on schedule to convert to FOIAXpress in October 2014, which would

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incorporate all of the recommended best practice capabilities and be compliant with Section 508 requirements. However, we were not provided any documentation to demonstrate that the transition will take place as planned.

USCIS and Coast Guard have an opportunity to improve the efficiency with which they process FOIA requests by acquiring processing systems that incorporate all recommended best practice capabilities. Moreover, having systems with capabilities that are compliant with Section 508 of the Rehabilitation Act (as amended) is essential to ensure that the components' electronic information is accessible to people with disabilities.

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## Conclusions

Responsibility for FOIA processing is shared between DHS's Privacy Office and component FOIA offices, with the components processing the majority of FOIA requests made to the department. The Privacy Office conducts oversight and policy-making functions, but the lack of an up-to-date FOIA regulation leaves gaps in the department's FOIA procedures and limits public visibility into its processing of requests. Further, inconsistent reporting of the costs of FOIA processing across the department has resulted in incomplete cost data, which, in turn, hinders management oversight. In addition, the lack of an agreement between USCIS and ICE has led to duplication of effort in processing FOIA requests for immigration files, as well as delays in the department's ability to provide the requested information. Re-establishing an agreement, to the extent that the benefits of doing so would exceed the costs, could help eliminate such duplication.

The DHS Privacy Office and the agency components selected for our study have taken a variety of actions aimed at reducing the number of their backlogged requests. Nonetheless, with the exception of one selected component, USCIS, reported that its backlog increased from fiscal year 2011 to fiscal year 2013, falling short of the department's reduction goals.

Most of the agency components in our study have implemented automated systems that include capabilities recommended to improve FOIA processing. However, USCIS has only partially implemented capabilities for providing system-generated correspondence to requesters. Full implementation could help improve the efficiency with which it processes FOIA requests. In addition, the Coast Guard has not implemented the majority of the recommended capabilities for improving

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its FOIA processing. Further, absent capabilities consistent with Section 508 of the *Rehabilitation Act* (as amended), the two components are not implementing the federal requirement to make their electronic information accessible to people with disabilities.

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## Recommendations for Executive Action

To improve the management of DHS FOIA requests, we recommend that the Secretary of DHS direct the Chief FOIA Officer to take the following four actions:

- Finalize and issue an updated DHS FOIA regulation.
- Improve reporting of FOIA costs by including salaries, employee benefits, non-personnel direct costs, indirect costs, and costs for other offices.
- Determine the viability of re-establishing the service-level agreement between USCIS and ICE to eliminate duplication in the processing of immigration files. If the benefits of doing so would exceed the costs, re-establish the agreement.
- Direct USCIS and Coast Guard to fully implement the recommended FOIA processing system capabilities and the section 508 requirement.

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## Agency Comments and Our Evaluation

We received written comments on a draft of this report from the Director of DHS's Departmental GAO-OIG Liaison Office. In the comments, which are reproduced in appendix II, the department concurred with all four of our recommendations and identified actions taken or planned to address them. Specifically, DHS stated that its Privacy Office is drafting a comprehensive FOIA regulation and also plans to draft and disseminate policy to ensure that all components are capturing the full cost of FOIA. Further, according to the department, a working group will be formed to determine the viability of re-establishing the service level agreement on FOIA processing between USCIS and ICE. Lastly, the department stated that it will draft guidance for components to fully implement the recommended FOIA processing system capabilities and Section 508 requirement. The department estimated that it will complete all actions by April 30, 2015. In addition, DHS also provided technical comments, which we incorporated as appropriate.

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We are sending copies of this report to the Secretary of Homeland Security. In addition, this report is available at no charge on the GAO website at <http://www.gao.gov>.

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If you or your staff have questions about this report, please contact me at (202) 512-6304 or [melvinv@gao.gov](mailto:melvinv@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix III.



Valerie C. Melvin  
Director, Information Management  
and Technology Resource Issues

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# Appendix I: Objectives, Scope, and Methodology

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Our objectives were to determine: (1) the responsibilities of, and total costs incurred by, the Department of Homeland Security (DHS) and selected components in managing and processing FOIA requests, and whether any duplication exists; (2) actions DHS and the selected components have taken to reduce FOIA backlogs and the results of their actions; and (3) the status of DHS's and the selected components' efforts to acquire and implement automated systems for processing FOIA requests.

To address the study objectives, we collected and analyzed published statistics and other documentation, and conducted interviews with responsible officials at the DHS Privacy Office and five selected DHS components. We purposefully selected the components by analyzing the department's fiscal year 2012 data on FOIA requests received, backlogs, and reported costs. We then selected U.S. Customs and Border Protection (CBP), the U.S. Citizenship and Immigration Services (USCIS), and Immigration and Customs Enforcement (ICE) because they were highest in all three categories—requests, backlogs, and reported costs. Next, we selected the U.S. Coast Guard (Coast Guard) because it is the component with the fifth highest volume of requests and backlogged requests and currently uses a manual process to track and process its FOIA requests. We purposefully selected the Federal Emergency Management Agency (FEMA) because it was the fourth highest in reported total costs and had unusually high reported costs for the number of requests it processed as compared to USCIS, CBP, and ICE. We included the DHS Privacy Office because it has overall responsibility for FOIA at the department level. Collectively, our selections account for about 95 percent of total reported DHS requests received, 87 percent of reported backlogged requests, and 76 percent of reported costs.

To determine the responsibilities of DHS and the selected components in managing and processing FOIA requests, we reviewed organization charts; the department's and components' policies and procedures; service level agreements; and published materials, such as DHS FOIA annual reports and DHS Chief FOIA Officer reports. We interviewed DHS and component officials about their responsibilities and management practices.

To determine the total costs incurred by DHS and its selected components in managing and processing FOIA requests, we examined overall costs as reported in the 2013 annual FOIA report, as well as detailed cost breakdowns used by the Privacy Office and the selected components to calculate their reported costs. To determine if all required



cost categories were being reported, we analyzed the categories of costs reported and compared them to the cost categories required by the Department of Justice (Justice) and federal management cost accounting standards<sup>1</sup> to determine the extent to which required cost elements were being reported. Further, we analyzed cost documentation provided, and interviewed agency officials to determine how costs were collected and what steps were taken to assure that cost figures were reliable. In assessing whether DHS and the selected components reported cost categories, we applied the following criteria: “yes” if reporting of costs was complete and was deemed reliable, “partial” if reported costs were incomplete or were judged not completely reliable, and “no” if they were not reported. Due to the non-reporting of particular cost categories and concerns about the accuracy of certain reported cost data, including data with obvious errors and inconsistent accounts of how data were collected, we concluded that, overall, the cost data provided were not sufficiently reliable, based on federal management cost accounting standards, to determine DHS’s total FOIA costs, but that our analysis allowed us to conclude that overall costs were underreported.

To determine if duplication exists in managing and processing FOIA requests, we examined policies and procedures, viewed demonstrations of how automated systems are used to manage and process requests, and interviewed agency officials to clarify workflow. We evaluated the processes against recommended practices discussed in our previously issued reports that addressed duplication in federal government programs.<sup>2</sup>

To determine what actions DHS and the selected components have taken to reduce their FOIA request backlogs and what have been the results of those actions, we examined backlog reduction goals published by the Office of Management and Budget, DHS, and the selected components. We examined DHS annual FOIA reports and Chief FOIA Officer reports, analyzed published statistics, and reviewed monthly backlog reports by the components to determine whether reduction goals were met. We interviewed agency officials and collected documents to determine what

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<sup>1</sup>*Federal Accounting Standards Advisory Board, Statement of Federal Financial Accounting Standards 4: Managerial Cost Accounting Standards and Concepts (version 13, June 2014).*

<sup>2</sup>[GAO-13-279SP](#), [GAO-11-318SP](#).

specific actions have been taken to reduce backlogs, identify actions that had been successful in reducing backlogs, and determine the underlying causes for the backlogged requests.

To determine the status of DHS's and selected components' efforts to acquire and implement automated systems, we assessed the capabilities of automated systems in use by the Privacy Office and the selected components. Specifically, we viewed demonstrations of systems used for tracking and processing requests and obtained documentation, such as user manuals and screen prints. We compared the capabilities of these systems to relevant statutory requirements, such as the *OPEN Government Act* requirement to assign tracking numbers to FOIA requests, and 13 systems capabilities considered to be best practices for FOIA processing compiled by the National Archives and Records Administration's Office of Government Information Services in conjunction with the Department of Commerce and the Environmental Protection Agency. In assessing DHS's and the components' actions to implement these capabilities, we applied the following criteria: "yes" means the capability had been implemented; "partially" means the capability was not implemented in its entirety, and "no" means the capability was not implemented. We also interviewed Privacy Office and selected component officials and collected documents describing one component's plans to implement a new tracking system.

In examining reported data on the volumes of FOIA requests made to DHS, we found two data reliability issues of concern. First, we found that a FOIA request may be recorded and counted more than once. For example, USCIS may receive a request for an immigration file, which it counts. It may then refer to ICE for processing certain documents in the file that were created by that component. ICE then enters this referral in its FOIA processing system as a new request. Thus, even though the department may have received one request for one immigration file, it may be reported as two requests received and closed by both USCIS and ICE. Similarly, a request sent to more than one component may be entered separately by each component that responds. Nonetheless, while this double counting may result in an inaccurate number of total requests received by DHS, it did not affect our findings, since we have no findings related to the overall volume of requests handled by DHS.

The second issue involved a group of FOIA requests that were improperly closed by CBP in fiscal year 2012. CBP counted the requests as closed, although they should have remained open and been counted as part of the component's backlog of requests. As a result, the component

reported a lower number of backlogged requests for 2012 than actually existed. CBP officials did not know exactly how many requests were involved, but estimated that there were about 11,000. The underreporting of the backlog of requests does not, however, affect our observation that CBP's backlog increased over the time period from 2011 through 2013 because CBP processed all of these requests during this time frame.

We conducted our work from November 2013 to November 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# Appendix II: Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

November 7, 2014

Valerie C. Melvin  
Director, Information Management  
and Technology Resource Issues  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Re: Draft Report GAO-15-82, "FREEDOM OF INFORMATION ACT: DHS Should Take Steps to Improve Cost Reporting and Eliminate Duplicate Processing"

Dear Ms. Melvin:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO's) work in planning and conducting its review and issuing this report.

The Department appreciates GAO's recognition of the steps DHS has taken to improve its Freedom of Information Act (FOIA) processing and to reduce its backlog. DHS is committed to improving its processes and enhancing efficiencies using technology to ensure compliance with disclosure laws and transparency in DHS activities.

The draft report contained four recommendations with which the Department concurs. Specifically, GAO recommended that the Secretary of Homeland Security direct the Chief FOIA Officer to:

**Recommendation 1:** Finalize and issue an updated DHS FOIA regulation.

**Response:** Concur. DHS's Privacy Office is drafting a comprehensive FOIA Regulation that will update current procedures on FOIA Operations in the Department that address the role of the public liaison, the fee limitation for electronic news media requests, or the fact that the department accepts requests via e-mail. Estimated Completion Date (ECD): April 30, 2015.

**Recommendation 2:** Improve reporting of FOIA costs by including salaries, employee benefits, non-personnel direct costs, indirect costs and costs for other offices.

**Response:** Concur. DHS's Privacy Office will draft and disseminate policy to ensure that all components are capturing the full FOIA costs. The policy will include definitions of each category of costs that components will be required to capture and submit annually. In addition, the DHS Privacy Office will develop a worksheet with examples of costs associated with each category to ensure that components capture FOIA costs fully. ECD: April 30, 2015.

**Recommendation 3:** Determine the viability of re-establishing the service-level agreement between USCIS and ICE to eliminate duplication in the processing of immigration files. If the benefits of doing so would exceed the costs, re-establish the agreement.

**Response:** Concur. The DHS Privacy Office, in conjunction with ICE's FOIA Division and the USCIS's FOIA Branch will establish a working group to determine the viability of re-establishing the service-level agreement between USCIS and ICE and, to determine a course of action for eliminating possible duplication in the processing of immigration files.  
ECD: April 30, 2015.

**Recommendation 4:** Direct USCIS and Coast Guard to fully implement the recommended FOIA processing system capabilities and the 508 requirement.

**Response:** Concur. DHS's Privacy Office will draft guidance for components to fully implement the recommended FOIA processing system capabilities and the 508 requirement.  
ECD: April 30, 2015.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Sincerely,



Jim H. Crumpacker, CIA, CFE  
Director  
Departmental GAO-OIG Liaison Office

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# Appendix III: GAO Contact and Staff Acknowledgements

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## GAO Contact

Valerie C. Melvin, (202) 512-6304 or [melvinv@gao.gov](mailto:melvinv@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Anjalique Lawrence (assistant director), Chris G. Businsky, Nancy Glover, Lisa Hardman, Alina J. Johnson, Lee McCracken, Freda Paintsil, Glenn Spiegel, and Walter Vance made key contributions to this report.

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