



June 2016

FREEDOM OF INFORMATION ACT

Department of Labor Can Improve Management of Its Program

GAO Highlights

Highlights of [GAO-16-248](#), a report to congressional requesters

Why GAO Did This Study

FOIA requires federal agencies to provide the public with access to government information in accordance with principles of openness and accountability and generally requires agencies to respond to requests for information within 20 working days. When an agency does not respond or a requester disagrees with the outcomes of his or her request, the requester can appeal a decision or file a lawsuit against the agency. Like other agencies, DOL responds to thousands of FOIA requests each year. In fiscal year 2015, the department received approximately 16,800 requests.

GAO was asked to review DOL's FOIA processing. GAO's objectives were to determine (1) how the department and its components manage and process FOIA requests, including how they prioritize requests, and the extent that responses to requests have been timely; and (2) how many lawsuits DOL has been subjected to arising from FOIA requests, and the results of those lawsuits. To do so, GAO reviewed DOL reports, policies, guidance, and other documentation; analyzed a random sample of FOIA requests processed by the department in fiscal year 2014; reviewed FOIA-related legal records; and interviewed officials.

What GAO Recommends

GAO is recommending, among other things, that DOL establish a time frame to finalize and issue its updated FOIA regulation and take actions to implement required and recommended system capabilities. In written comments on a draft of the report, the department agreed with the recommendations.

View [GAO-16-248](#). For more information, contact Valerie C. Melvin at (202) 512-6304 or melvinv@gao.gov.

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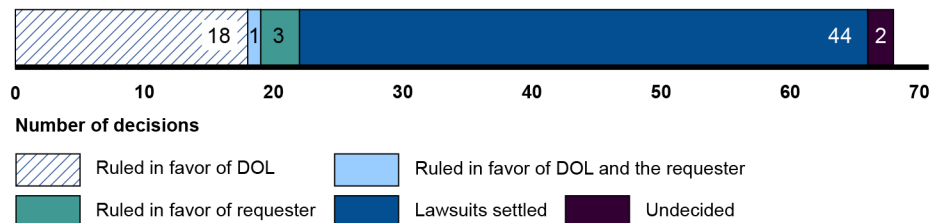
Department of Labor Can Improve Management of Its Program

What GAO Found

Responsibilities for managing and processing Freedom of Information Act (FOIA) requests are handled by the Department of Labor's (DOL) 23 component offices. Within one of these components, the Office of Information Services (OIS) functions as the department's central FOIA office and has agency-wide responsibility for managing the program; however, the department has not updated its FOIA regulation to reflect changes in its process made in response to more recent amendments to the law and new implementing guidance. DOL uses an information technology (IT) system to manage and track requests, but it has not implemented key required and recommended capabilities for enhancing FOIA processing, such as capabilities to accommodate individuals with disabilities or electronic redaction. Implementing the required and recommended capabilities could improve the efficiency of the department's FOIA processing. DOL and its components have implemented a process for prioritizing FOIA requests, allowing for expedited processing in certain cases, and in fiscal year 2014 the department processed an estimated 76 percent of requests that GAO reviewed within 20 working days. For the estimated 24 percent of cases that were not timely, officials attributed these delays, in part, to the involvement of multiple components in a single request or the time required to process large volumes of requested records. However, the department did not document the rationales for delays in its FOIA tracking system or notify requesters of them. Further, the department had not responded to administrative appeals within the statutory time frame of 20 working days, but is taking steps to reduce the backlog of appeals.

From January 2005 through December 2014, 68 FOIA-related lawsuits were brought against DOL. Of these lawsuits, the court ruled in favor of the department in 18 cases, jointly in favor of both the department and the requester in 1 case, and in favor of the requesters in 3 cases. In 44 of the remaining lawsuits, the department and the requesters established settlement agreements that awarded attorney's fees and other costs to the requesters or resulted in the department potentially releasing additional information. A decision on 2 lawsuits was undecided as of April 2016 (see figure).

Number and Outcomes of Freedom of Information Act-Related Lawsuits Brought against the Department of Labor (DOL), January 2005–December 2014



Source: GAO analysis of lawsuits documentation. | GAO-16-248

Although recommended by Department of Justice guidance, the department did not notify requesters of mediation services offered by the Office of Government Information Services as an alternative to litigation. By doing so, DOL may be able to avoid future lawsuits, thus saving resources and ensuring that requesters are kept informed about the department's FOIA process.

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Abbreviations

DOL	Department of Labor
FOIA	Freedom of Information Act
OIS	Office of Information Services
SIMS-FOIA	Secretary's Information Management System for FOIA

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June 2, 2016

The Honorable Lamar Alexander
Chairman
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate

The Freedom of Information Act¹ (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 to FOIA requesters that contributes to the understanding of government actions, including the disclosure of waste, fraud, and abuse.

The Department of Labor (DOL) is one of the many agencies that respond to thousands of FOIA requests each year. The department has 23 component offices² that receive and process requests for information related to various labor issues, such as workers' compensation, mine safety and health, and employee wages. Among these components, the department's Office of the Solicitor also addresses administrative appeals when requesters disagree with the outcomes of their requests. Further,

¹5 U.S.C. § 552.

²The Department of Labor administers its Freedom of Information Act program through its 23 component offices: Adjudicatory Boards, Office of Administrative Law Judges, Office of the Assistant Secretary for Policy, Bureau of Labor Statistics, Office of the Chief Financial Officer, Employee Benefits Security Administration, Employment and Training Administration, Bureau of International Labor Affairs, Mine Safety and Health Administration, Office of the Assistant Secretary for Administration and Management, Office of Congressional and Intergovernmental Affairs, Office of Disability Employment Policy, Office of Federal Contract Compliance Programs, Office of Inspector General, Office of Labor Management Standards, Office of Public Affairs, Office of the Secretary, Occupational Safety and Health Administration, Office of Workers' Compensation Programs, Office of the Solicitor, Veterans' Employment and Training Service, Women's Bureau, and Wage and Hour Division.

the department is subject to FOIA litigation for various reasons, such as when a request is denied or not responded to within the statutory time frame.

For fiscal year 2015, DOL reported that it received approximately 16,800 FOIA requests and processed approximately 17,100 requests. The department also reported that it had a backlog of about 590 unprocessed requests and about 400 appeals, and that it spent approximately \$429,000 on litigating FOIA lawsuits.

You asked us to review DOL's processing of FOIA requests. Our objectives were to determine (1) how DOL and its components manage and process FOIA requests, including how they prioritize requests, and the extent that responses to requests have been timely; and (2) how many lawsuits DOL has been subject to arising from FOIA requests, and the results of those lawsuits.

To determine how the department manages and processes FOIA requests, we evaluated activities conducted by the department's central FOIA office (the Office of Information Services) and component offices, and reviewed directives, procedures, annual FOIA reports, and other documentation describing their activities. We reviewed criteria used by the central office and components to prioritize requests, assessed current procedures and practices against the criteria, and reviewed available statistics on FOIA processing timeliness.

We also developed and administered a questionnaire to the 23 components in June 2015 to facilitate our understanding of how the central FOIA office and the components manage, prioritize, and process FOIA requests. To ensure that our questions were clear and logical and that respondents could answer the questions without undue burden, we provided the draft questionnaire to the department's Office of Information Services and obtained and incorporated the office's comments on the questionnaire in advance of sending it to the 23 components. We received responses from all of the components.

Further, DOL provided a list of 14,745 FOIA requests that the department had received as of October 1, 2013, and had fully processed (closed) by September 30, 2014. Of this total, we randomly selected a representative sample of 258 FOIA requests. For each request, we determined whether the department responded to the request within the 20-day statutory time frame. We also reviewed data from the department's automated FOIA tracking system to identify any documentation of delays in processing the

requests, reasons for the delays, and any actions taken by the department to notify requesters of delays. We supplemented our work with interviews of relevant FOIA officials in the central and component FOIA offices. The results of our sample are generalizable to the population of FOIA requests processed by the department as of September 30, 2014.

To identify the nature and outcome of lawsuits arising from FOIA requests made to DOL, we reviewed documentation that discussed the department's FOIA litigation and related settlements, and legal decisions that occurred from January 2005 through December 2014. Further, we reviewed Department of Justice documentation that included a listing of DOL's FOIA litigation cases, attorney costs and fees assessed by the courts, and court decisions made from January 2005 through December 2014. We also interviewed relevant legal counsel and agency officials in DOL and the Department of Justice. Additional details on our objectives, scope, and methodology are included in appendix I.

We conducted this performance audit from February 2015 to June 2016 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.

Background

FOIA establishes a legal right of access to government information on the basis of the principles of openness and accountability in government. Before FOIA's 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 attorneys filing on behalf of an individual, corporations, and organizations, can file a FOIA request. For example, an attorney can request labor-related workers' compensation files on behalf of his or her client, 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. (Appendix II describes the nine specific exemptions that can be applied to withhold, for example, classified, confidential commercial, privileged, privacy, and several types of law enforcement information.) The act also requires agencies to publish a regulation that informs the public about their FOIA process. The regulation is to include, among other things, provisions for expediting requests under certain circumstances.

FOIA Amendments and Guidance Call for Improvements in Agencies' Processing of Requests

Over the past two decades, various amendments have been enacted and guidance issued to help improve agencies' processing of FOIA requests. The 1996 e-FOIA amendments,³ 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.⁴ The e-FOIA 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 amendments encouraged online, public access to government information by requiring agencies to make specific types of records available in electronic form.

³Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104-231 (Oct. 2, 1996).

⁴The 20-day time period to respond to a request may be extended beyond 30 days in certain circumstances. For example, the agency may notify the person making the request that the time limit cannot be met, and provide the person with an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request.

In a later effort to reduce agencies' backlogged FOIA requests, the President issued Executive Order 13392 in December 2005,⁵ 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 a 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 the Department of Justice. (These are referred to as Chief FOIA Officer reports.)

The Department of 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,⁶ 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.

⁵Executive Order 13392, *Improving Agency Disclosure of Information* (Washington, D.C.: Dec. 14, 2005).

⁶Openness Promotes Effectiveness in our National Government Act of 2007, Pub. L. No. 110-175 (Dec. 31, 2007).

Further, in January 2009, the President issued two memoranda, Transparency and Open Government⁷ and Freedom of Information Act,⁸ 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's finding, in passing the OPEN Government Act, that FOIA established a "strong presumption in favor of disclosure."

In September 2013, the Department of Justice issued guidance to assist federal agencies in implementing the memoranda and the OPEN Government Act that included procedures for agencies to follow when responding to FOIA requests.⁹ Specifically, the guidance discussed how requests are processed—from the point of determining whether an entity in receipt of a request is subject to FOIA, to responding to the review of an agency's decision regarding a request on an administrative appeal. The guidance also includes procedures on the expedited processing of FOIA requests.

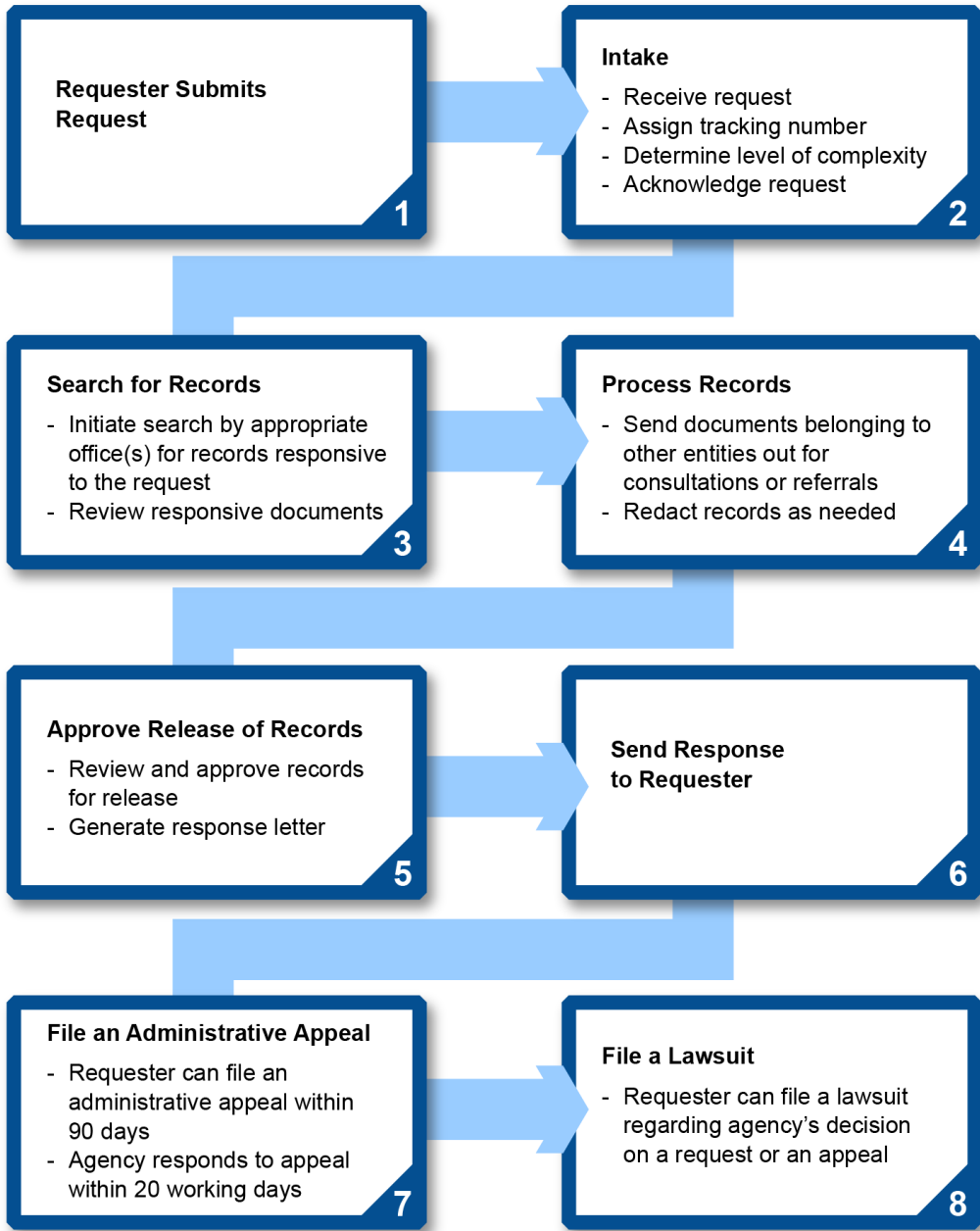
Agencies, including DOL, are generally required to respond to a FOIA request within 20 working days. A request may be received in writing or by electronic means. Once received, the request is processed through multiple phases, which include assigning a tracking number, searching for responsive records, processing records, and releasing records. Also, as relevant, agencies respond to administrative appeals and lawsuits filed as a result of their actions and decisions in addressing the FOIA requests. Figure 1 provides a simplified overview of the FOIA process, from the receipt of a request through responding to a lawsuit.

⁷Presidential Memorandum of Jan. 21, 2009, *Transparency and Open Government*.

⁸Presidential Memorandum of Jan. 21, 2009, *Freedom of Information Act*.

⁹Department of Justice Guide to the Freedom of Information Act Procedural Requirements (Sept. 4, 2013).

Figure 1: Simplified Overview of the Federal Government’s Freedom of Information Act (FOIA) Request and Litigation Process



Represents the **typical** Freedom of Information Act (FOIA) process
 Represents a FOIA **litigation** process

Source: GAO analysis of simplified FOIA process. | GAO-16-248

As indicated above, during the intake phase of a typical agency FOIA process, a request is to be logged into the agency's FOIA system and a tracking number assigned. The request is then to be reviewed by FOIA staff to determine its scope and level of complexity.¹⁰ 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, as well as notifying the requester of estimated fees, if any.

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.

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.¹¹ 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.

FOIA also provides requesters with the right to file an administrative appeal if they disagree with the agency's decision. After an agency renders a decision and the requester files an administrative appeal, the agency has 20 working days to respond to the requester regarding the appeal.

Further, FOIA allows requesters to challenge an agency's final decision in federal court through a lawsuit. Specifically, if any agency fails to comply

¹⁰Factors 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.

¹¹Some 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.

with the statutory time limits, including responding to requests within 20 working days, a requester has the right to consider the request denied and sue the agency to compel disclosure. A requester should generally exhaust his or her administrative remedies, such as filing an administrative appeal, before filing a lawsuit.¹²

In 2007, FOIA was amended to allow both requesters and agencies to contact the Office of Government Information Services, within the National Archives and Records Administration, to help resolve a dispute at any point in the FOIA process, including after filing an administrative appeal. Mediation also can be used as an alternative to litigation.¹³

DOL and Its Components Collect and Maintain Records That Can Be Subject to FOIA Requests

Established in 1913, DOL has primary responsibility for overseeing the nation's job training programs and for enforcing a variety of federal labor laws. The department's mission is to foster, promote, and develop the welfare of wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights.

The department administers its various mission responsibilities, including the processing of FOIA requests, through its 23 component offices. These components vary in mission and the types of records that they maintain. Table 1 provides details on each component's mission and types of records maintained.

¹²The Court of Appeals for the District of Columbia Circuit has held that exhaustion of the administrative appeal process is "generally required before filing suit in federal court." *Hidalgo v. FBI*, 344 F.3d 1256, 1258 (D.C. Cir. 2003) (quoting *Oglesby v. U.S. Dep't of the Army*, 920 F.2d 57, 61 (D.C. Cir. 1990)).

¹³The OPEN Government Act, which was enacted in 2007, amended FOIA to establish the Office of Government Information Services within the National Archives and Records Administration to oversee and assist agencies in implementing FOIA. Among its responsibilities, the office offers mediation services to resolve disputes between requesters and federal agencies.

Table 1: Department of Labor Components' Various Missions and Types of Records

Component	Mission	Types of records
Adjudicatory Boards	Issue legally correct, just, and timely decisions in cases including a wide range of worker protection laws	Worker protection such as environmental and transportation protection
Office of Administrative Law Judges	Give fair and equitable decisions under the governing law and the facts of each case	Black lung benefits and longshore workers' compensation
Office of the Assistant Secretary for Policy	Provide advice on matters of policy development, program evaluation, regulations, budget, and legislation that will improve the lives of workers, retirees, and their families	Labor issues including growing wage gap for working families
Bureau of Labor Statistics	Collect, analyze, and disseminate essential economic information to support public and private decision-making	Labor market activity, working conditions, and price changes in the economy
Office of the Chief Financial Officer	Uphold strong financial management and accountability while providing timely, accurate, and reliable financial information and enhancing internal control processes	Financial information and internal control processes
Employee Benefits Security Administration	Safeguard the security of retirement, health, and other workplace-related benefits of workers and their families	Workplace related benefits and regulations; Employee Retirement Income Security Act filings, investigations, and audits
Employment and Training Administration	Provide job training, employment, and labor market information, and income maintenance services primarily through state and local workforce development systems	Job training, employment, labor market, and income information
Bureau of International Labor Affairs	Improve global working conditions, raise living standards, protect workers' ability to exercise their rights, and address the workplace exploitation of children and other vulnerable populations	Information and reports on global working conditions, living standards, and exploitation of children and vulnerable populations
Mine Safety and Health Administration	Promote safe and healthy workplaces for the nation's miners to prevent death, disease, and injury from mining	Mine safety and health information
Office of the Assistant Secretary for Administration and Management	Provide leadership and infrastructure support for business operations and procurement, budget and finance, information technology, human resources and civil rights, security and emergency management, and strategic planning	Department business operations and procurement information
Office of Congressional and Intergovernmental Affairs	Promote the department to policymakers in federal, state, and local governments, and assist the Secretary, Deputy Secretary, agency heads, and departmental staff in developing effective programs and strategies to achieve the department's legislative goals and objectives.	Information discussing the department's programs as well as federal, state, and local labor issues
Office of Disability Employment Policy	Develop and influence policies and practices that increase the number and quality of employment opportunities for people with disabilities	Employment policies and practices related to people with disabilities

Office of Federal Contract Compliance Programs	Enforce, for the benefit of applicants and employees, the contractual promise of affirmative action and equal employment opportunity required of those doing business with the federal government	Affirmative action and equal employment opportunity information
Office of Inspector General	Provide independent and objective oversight of Department's programs and operations through audits and investigations	Investigations and audits related to the department's programs and operations
Office of Labor Management Standards	Administer and enforce most provisions of the Labor-Management Reporting and Disclosure Act of 1959, as amended, and administer the Civil Service Reform Act of 1978 and the Foreign Service Act of 1980 related to standards of conduct for federal employee organizations	Financial integrity information in labor organizations, union records, and union officer election investigations
Office of Public Affairs	Provide the Secretary of Labor and department's agencies with advice and guidance on all matters pertaining to public affairs	Public affairs programs and activities
Office of the Secretary	Foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights	Work-related benefits and rights of wage earners, job seekers, and retirees
Occupational Safety and Health Administration	Assure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance	Records related to workforce accidents and death investigations
Office of Workers' Compensation Programs	Protect the interests of workers who are injured or become ill on the job, their families, and their employers by making timely, appropriate, and accurate decisions on claims, providing prompt payment of benefits and helping injured workers return to gainful work as early as is feasible	Workers' claims and benefits
Office of the Solicitor	Meet the legal service demands of the entire Department of Labor	Advice, litigation, and other documents related to legal services
Veterans' Employment and Training Service	Provide resources and expertise to assist veterans and service members and prepare them to obtain meaningful careers, maximize their employment opportunities, and protect their employment rights	Employment opportunities and rights for veterans and service members
Women's Bureau	Develop policies and standards and conduct inquiries to safeguard the interests of working women	Working conditions, welfare, and opportunities for working women
Wage and Hour Division	Promote and achieve compliance with labor standards to protect and enhance the welfare of the nation's workforce	Minimum wage and overtime pay information

Source: Department of Labor information. | GAO-16-248

DOL experienced an increase in the number of FOIA requests received every year from fiscal year 2010 through 2013, a decrease in the number of requests received from fiscal year 2013 through 2014, and an increase in fiscal year 2015. Specifically, the department reported receiving 17,398 requests in fiscal year 2010, and it reported receiving 18,755 requests in

fiscal year 2013—a 7 percent increase. In fiscal year 2014, the department reported receiving 16,106 FOIA requests—a 14 percent decrease from fiscal year 2013. However, in fiscal year 2015, the reported number of requests received increased again, to 16,792.

Further, the department processed an increased number of requests from fiscal years 2010 through 2012. It then processed a decreased number of requests during fiscal years 2013 and 2014, and an increased number of requests again in fiscal year 2015. Specifically, the department reported processing 17,625 requests in fiscal year 2010, and it reported processing 19,224 requests in fiscal year 2012—an 8 percent increase. While the department processed slightly fewer requests (19,175) in fiscal year 2013, it reported processing 16,715 FOIA requests in fiscal year 2014—a 13 percent decrease compared with fiscal year 2012. However, in fiscal year 2015, the reported number of requests processed increased to 17,104.

These numbers of requests received and processed, by the department from fiscal year 2010 through fiscal year 2015 are summarized in table 2.

Table 2: Freedom of Information Act Requests Received and Processed at the Department of Labor, Fiscal Years 2010–2015

Fiscal year	Requests received	Requests processed
2010	17,398	17,625
2011	18,012	18,129
2012	18,560	19,224
2013	18,755	19,175
2014	16,106	16,715
2015	16,792	17,104

Source: Department of Labor Annual FOIA Reports 2010–2015. | GAO-16-248

DOL and Its Components Have Implemented a Decentralized Process to Manage and Prioritize FOIA Requests; However, Not All Responses to Requests Have Been Timely

Responsibilities for managing and processing FOIA requests are handled by DOL's 23 component offices. Within one of these components (the Office of the Solicitor), the Office of Information Services (OIS) serves as the department's central FOIA office and has agency-wide responsibility for managing the program, to include developing and issuing guidance to implement FOIA initiatives, providing training, and preparing required annual reports. However, DOL has not updated its regulation that is intended to inform the public of the department's FOIA operations. The component offices manage their own processing and tracking of FOIA requests, relying on an automated system and a process for prioritizing their responses to requests, while appeals and lawsuits are centrally handled. However, while the department's automated FOIA tracking system meets most statutory requirements, key recommended capabilities to enhance processing have not been implemented. In addition, while the components had provided timely responses to many of the FOIA requests, an estimated 24 percent of the requests were not responded to within the statutory time frame and most components had not documented the rationale for these delays in the automated FOIA tracking system or notified requesters of the delayed responses. Further, most FOIA appeals had not been responded to within the statutory time frame of 20 working days.

The Office of Information Services Provides Administrative Support and Guidance, but the Department Has Not Updated Its FOIA Regulation

OIS was established within the Office of the Solicitor in fiscal year 2010, and the Solicitor serves as the Chief FOIA Officer. OIS is responsible for administering the department's FOIA program, to include coordinating and overseeing the components' operations, providing training, and preparing the required annual reports on the department's FOIA performance. In addition, this office has responsibility for processing certain types of requests and assisting in the coordination of requests involving multiple components.¹⁴

In carrying out its duties, the office develops and disseminates guidance on processing requests and implementing elements of the act; it also is responsible for developing the department's FOIA regulation (discussed in more detail later in the report). For example, in October 2010, the office

¹⁴The Office of Information Services processes requests in instances where the department will be providing a consolidated response for records managed by multiple components.

issued guidance to FOIA disclosure officers and coordinators addressing oversight; roles and responsibilities; and applying exemptions, fees, and fee waivers. In addition, in June 2013, it issued a bulletin to FOIA coordinators regarding steps for addressing requesters' inquiries about requests and discussing the status of requests. A month later, in July 2013, the office issued a bulletin discussing time limits associated with processing requests, including guidance for time limit extensions during unusual circumstances. Further, in August 2013, OIS issued best practices guidance that provides direction to the department's staff in responding to requests.¹⁵ The guidance outlines the nine stages of processing a request, as defined by the department, including processing administrative appeals and judicial reviews of litigation filed by requesters. (Appendix III provides additional details on the stages of the department's process for handling FOIA requests.)

Beyond developing and issuing guidance, OIS performs a number of oversight and coordination functions:

- **Holds regular meetings with components.** The office holds quarterly meetings with components to discuss their processing of FOIA requests, including plans to reduce backlogs, upcoming training, and best practices. For example, in a January 2015, quarterly meeting with all components' FOIA coordinators, OIS discussed its plans to conduct administrative reviews covering various areas, such as timeliness and backlog reduction, rules associated with granting and denying requests, and multi-tracking requests; it also discussed the components' FOIA staffing needs.
- **Prepares and Tracks Processing Metrics.** The office also uses data within the department's FOIA tracking system—the Secretary's Information Management System for FOIA (SIMS-FOIA)—to provide a quarterly report to departmental leadership and the Department of Justice on the number of requests received, processed, and backlogged, among other reporting requirements. (SIMS-FOIA is discussed in greater detail later in this report.)
- **Conducts reviews to assess components' actions.** OIS reviews components' FOIA programs to assess their policies, procedures, and

¹⁵Department of Labor FOIA Best Practices Processing Guide (Aug. 9, 2013).

compliance with the act. For example, in fiscal year 2015, the office reviewed 14 of 22¹⁶ components in areas such as FOIA exemptions, timeliness and backlog reduction, agency website and electronic reading rooms, and staffing resources for processing requests. OIS officials stated that they plan to complete reviews of the remaining 8 components by September 2016. The officials added that they assess the information gathered during these reviews to identify areas where the components could benefit from additional training and guidance.

- **Provides training to employees.** The department, through OIS, hosts a yearly training conference for employees with FOIA responsibilities. This conference addresses topics such as processing requests, responsibilities for searching for requests, applying exemptions, and assessing search fees. In addition, in February 2012, February and April 2013, and April 2014, the office held a series of targeted training sessions that addressed topics such as FOIA best practices in customer service, and applying specific exemptions.
- **Routes requests to components.** OIS routes to the appropriate component(s) those requests sent to DOL via its department-wide e-mail address or that it receives when a requester is unsure which DOL component maintains records that are responsive to a request. The office also addresses those requests sent to the attention of the Solicitor/Chief FOIA Officer. In addition, it coordinates responses to requests that involve multiple components.

DOL Has Not Updated Its Regulation Informing the Public of FOIA Operations

FOIA requires federal agencies to publish regulations that govern and help inform the public of their FOIA operations. These regulations are to provide guidance on the procedures to be followed in making a request and on specific matters such as fees and expedited processing of requests.

Toward this end, in May 2006, DOL, through the Office of the Solicitor, issued a regulation describing steps that individuals are required to follow in making requests, such as submitting a written request directly to the component that maintains the record. The regulations also explained the

¹⁶OIS did not include the Office of the Solicitor in the scope of its fiscal year 2015 review.

department's processing of such requests, including charging fees for the requested records.¹⁷

However, since the issuance of this regulation in 2006, amendments to FOIA and related guidance have led to changes in the department's processes that are not reflected in the regulation. These changes pertain to the OPEN Government Act of 2007 requirements that federal agencies have a FOIA Public Liaison, who is responsible for assisting in resolving disputes between the requester and the agency. Further, this act required federal agencies to 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 requests. In addition, the President's FOIA memorandum on transparency and open government and 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 are required to rapidly disclose information; increase opportunities for the public to participate in policymaking; and use innovative tools, methods, and systems to cooperate among themselves and across all levels of government.

The department has taken actions consistent with these requirements. Specifically, in 2006, DOL implemented its SIMS-FOIA system to track and process requests. Further, the department implemented its FOIA public portal, which links to SIMS-FOIA and allows requesters to track the status of their requests through an Internet service using assigned request tracking numbers. The department also designated a FOIA Public Liaison in December 2007. Additionally, in response to the President's FOIA memorandum and the Attorney General's FOIA guidelines of 2009, the department in December 2011¹⁸ directed all components to ensure transparency when responding to requests by not only disclosing information that the act requires to be disclosed, but also by making discretionary disclosures of information that will not result in foreseeable harm to an interest protected under FOIA.

¹⁷29 C.F.R. Part 70.

¹⁸DOL Memorandum for FOIA Coordinators, *FOIA Disclosure Officers, and SOL FOIA Advisor: Revised Guidance on Implementing FOIA at the Department of Labor—Making Discretionary Disclosures* (Dec. 9, 2011).

Nevertheless, while it has taken these actions, DOL has not revised its FOIA regulation to inform the public of the role of its public liaison, the department FOIA tracking system, and the availability of the FOIA public portal for tracking the status of requests. In discussing this matter, officials in the Office of the Solicitor stated that updating the regulation is on the department's regulatory agenda and that, as of March 2016, a draft of the regulation was being circulated for internal review. However, these officials said they had not established a time frame for when the regulation would be finalized. Until the department finalizes an updated regulation reflecting changes in how it processes requests, it will lack an important mechanism for facilitating effective interaction with the public on the handling of FOIA requests.

DOL Components Are Separately Responsible for Processing and Tracking FOIA Requests

The processing of requests is decentralized among the department's 23 components, with each component separately administering its own program. In this regard, each component has its own FOIA coordinator and full- and/or part-time staff assigned to process requests; is responsible for its FOIA library;¹⁹ and directly enters information in the department's FOIA tracking system regarding the processing of its own requests. Similar to the process used across federal government, once a request has been received and assigned to the appropriate component, the component carries out the processing, tracking, and reporting on the request. Most components do so using the department's central FOIA tracking system.

However, the components vary in aspects of their operations. For example, a number of the components are further decentralized, in which requests are assigned to and processed within multiple national, regional, and/or directorate offices (subcomponents) that make up the component. Specifically, once a request is received in a decentralized office, the FOIA processor located in the appropriate subcomponent office is responsible for responding to the request and populating the required information in

¹⁹FOIA requires agencies to make certain categories of records available to the public for "inspection and copying." Traditionally, most agencies had established physical reading rooms, where the public could have access to these records. However, the e-FOIA amendments of 1996 required agencies to post this information online, and as a result, some agencies have phased out their physical reading rooms and established online reading rooms (now known as FOIA Libraries).

the department's central tracking system. Other components are centralized, in which the processing of requests occurs within that one office and does not have to be assigned to a subcomponent office.

Components also vary significantly in the number of requests received. For example, in fiscal year 2015, the Occupational Safety and Health Administration received 9,123 requests, while the Office of the Chief Financial Officer received 3 requests. Further, the components rely on varying numbers of full-time employees, as well as part-time and contractor employees, to manage and process the requests.²⁰ For example, the Employment and Training Administration reported that it had 8 full-time employees and 9 part-time employees in fiscal year 2015. On the other hand, the Employee Benefits Security Administration reported it had no full-time employees and 3 part-time employees in the same year. Collectively, for fiscal year 2015, the 23 components reported having 40 full-time and about 154 full-time or part-time employees assigned to process FOIA requests.

Table 3 summarizes the components processing structure, requests received in fiscal year 2015, and the number of employees that manage and process the requests.

Table 3: Processing Structure, Reported Requests, and Staff for Department of Labor Components' Freedom of Information Act Programs, Fiscal Year 2015

Component	Processing structure	Number of FOIA requests received	Number of full-time FOIA employees	Part time FOIA employees (full-time equivalent) ^a	Total full-time and full-time equivalent employees that help process FOIA requests
Occupational Safety and Health Administration	Decentralized	9,123	5	95.0	100.0
Wage and Hour Division	Decentralized	2,726	6	.9	6.9
Employment and Training Administration	Centralized	1,649	8	9.4	17.4
Mine Safety and Health Administration	Decentralized	1,300	5	23.1	28.1

²⁰For purposes of the FOIA Annual Report, Department of Justice advises agencies, including Labor, to combine part-time and contractor employees to produce the number of full-time equivalent FOIA employees.

Employee Benefits Security Administration	Decentralized	507	0	3.1	3.1
Office of Workers' Compensation Programs	Decentralized	430	2	2.3	4.3
Office of Federal Contract Compliance Programs	Centralized	183	1	5.6	6.6
Office of the Assistant Secretary for Administration and Management	Decentralized	169	0	4.9	4.9
Veterans' Employment and Training Service	Decentralized	144	1	.4	1.4
Office of Administrative Law Judges	Decentralized	121	0	1	1
Office of Labor Management Standards	Centralized	91	0	1	1
Office of Inspector General	Centralized	83	1	0	1
Office of the Secretary	Centralized	55	0	.3	0.3
Office of the Solicitor	Decentralized	53	11	4.1	15.1
Bureau of Labor Statistics	Centralized	38	0	0.4	0.4
Adjudicatory Boards	Centralized	32	0	.5	0.5
Office of Congressional and Intergovernmental Affairs	Centralized	29	0	.5	0.5
Office of Public Affairs	Centralized	18	0	0.5	0.5
Bureau of International Labor Affairs	Centralized	13	0	0.1	0.1
Office of the Assistant Secretary for Policy	Centralized	11	0	0.5	0.5
Women's Bureau	Centralized	7	0	.3	0.3
Office of Disability Employment Policy	Centralized	7	0	0.1	0.1
Office of the Chief Financial Officer	Centralized	3	0	0.3	0.3
Totals		16,792	40	154.0	194.0

Source: GAO analysis of DOL data and the DOL 2015 Annual FOIA Report. | GAO-16-248.

^aThese include part-time employees who perform FOIA duties or full-time employees who perform FOIA duties less than 100 percent of the time. Hours worked by these employees are expressed in terms of the equivalent number of full-time employees.

While requests are separately handled by the components, within the Office of the Solicitor two offices—the Counsel for FOIA Appeals, Federal Records Act, and Paperwork Reduction Act and the Counsel for FOIA and Information Law—individually handle FOIA appeals and FOIA lawsuits. The Counsel for FOIA Appeals, Federal Records Act, and Paperwork Reduction Act is responsible for addressing administrative appeals when requesters disagree with the outcomes of their requests. To assist with tracking the appeals it receives, the office uses an automated system called the Matter Management System. Further, the Counsel for FOIA and Information Law is responsible for providing legal advice on processing requests and defending FOIA litigation.

DOL's FOIA Tracking System Meets Most Statutory Requirements, but Not All Key Recommended Capabilities to Enhance Processing Have Been Implemented

Various FOIA amendments and guidance call for agencies, such as DOL, to use automated systems to improve the processing and management of requests. 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 requests. Further, the President's January 2009 Freedom of Information Act memo instructed agencies to use modern technology to inform citizens about what is known and done by their government. In addition, FOIA processing systems, like all automated 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.²¹

In accordance with the OPEN Government Act, DOL has implemented SIMS-FOIA to assist the department in tracking the requests received and processed.²² The system assigns unique tracking numbers for each request received, and tracks and measures the timeliness of the requests. Further, staff who process requests are able to include in the system the date the request was received by the first component that may be responsible for processing the request and the date the request was routed to and received by the appropriate component responsible for processing the request. Based on this information, the system then calculates the date by which the response is due to the requester, which is 20 working days from the date the request was received by the office responsible for its processing.

In responding to our questionnaire, 22 of 23 components reported using SIMS-FOIA and provided documentation to demonstrate their use of the system to track requests. Due to its independent oversight role within the department, DOL's Office of Inspector General stated that it does not use this system to track its requests. According to its FOIA Officer, the office has instead created a separate system that is similar to SIMS-FOIA—the Office of Inspector General FOIA Tracking System—to track its requests.

²¹29 U.S.C. § 794d.

²²Department of Labor components were required to use the Secretary's Information Management System for FOIA (SIMS-FOIA) by December 2008.

Further, in accordance with the act, DOL implemented its FOIA public portal that links to SIMS-FOIA and allows requesters to track the status of their requests through an Internet service using assigned request tracking numbers. Specifically, requesters can access the public portal via the DOL website (<http://www.dol.gov/foia>) to obtain the status of their requests. The information provided by the portal includes dates on which the agency received the requests and estimated dates on which the agency expects to complete action on the requests.

Nevertheless, while the department has taken these actions, it has not ensured that SIMS-FOIA and the online portal are compliant with requirements of Section 508 of the Rehabilitation Act. According to DOL officials in OIS, during a test performed by the department's Office of Public Affairs, the online portal was determined to have accessibility issues. Specifically, the portal could not be easily accessed by those who were blind or had impaired vision. In addition, the 508 compliance tester in the department's Office of the Chief Information Officer found that SIMS-FOIA was not accessible to vision impaired employees who need to use the system.

With regard to this finding, the Office of the Chief Information Officer determined that, because the system is only used internally by DOL employees, it would fulfill the requirements of Section 508 by providing reasonable accommodations, such as large screen magnifiers and verbal description tools, to those affected employees needing access to the information contained in SIMS-FOIA. According to the Office of the Chief Information Officer, accommodations would be made on a case-by-case basis to address the employee's specific needs.

Further, OIS officials told us that the department is working to make the online portal and SIMS-FOIA compliant with the requirements of Section 508. However, OIS officials could not say by what date compliance with the requirements is expected to be achieved. Having systems that are compliant with Section 508 of the Rehabilitation Act (as amended) is essential to ensure that the department's electronic information is accessible to all individuals, including those with disabilities.

Beyond the requirements provided in law and guidance to develop automated systems to track FOIA requests, three federal agencies have collectively identified capabilities for systems 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 the following 12 capabilities of an automated system that it considers recommended best practices for FOIA processing:

- using a single, component-wide system for tracking requests;
- accepting the request online, either through e-mail or online request form;
- multi-tracking requests electronically;
- routing requests 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;
- tracking appeals electronically;
- generating periodic reporting statistics, such as annual report and quarterly backlog data, used to develop reports; and
- storing and routing correspondence, such as letters or e-mails between agencies and requesters.

As of March 2016, DOL had implemented 7 of the 12 recommended best practices for SIMS-FOIA and the FOIA public portal. Specifically, the department had implemented the capabilities of a single tracking system, as well as capabilities for accepting requests through e-mail; multi-tracking requests; routing the request to the office responsible for processing the request; storing and routing correspondence with a requester; and generating periodic report statistics, such as the fiscal year FOIA annual report and quarterly report, that identify requests received, processed, and backlogged. In addition, as mentioned earlier, the department uses a separate FOIA appeals tracking system—the Matter Management System—to track appeals electronically.

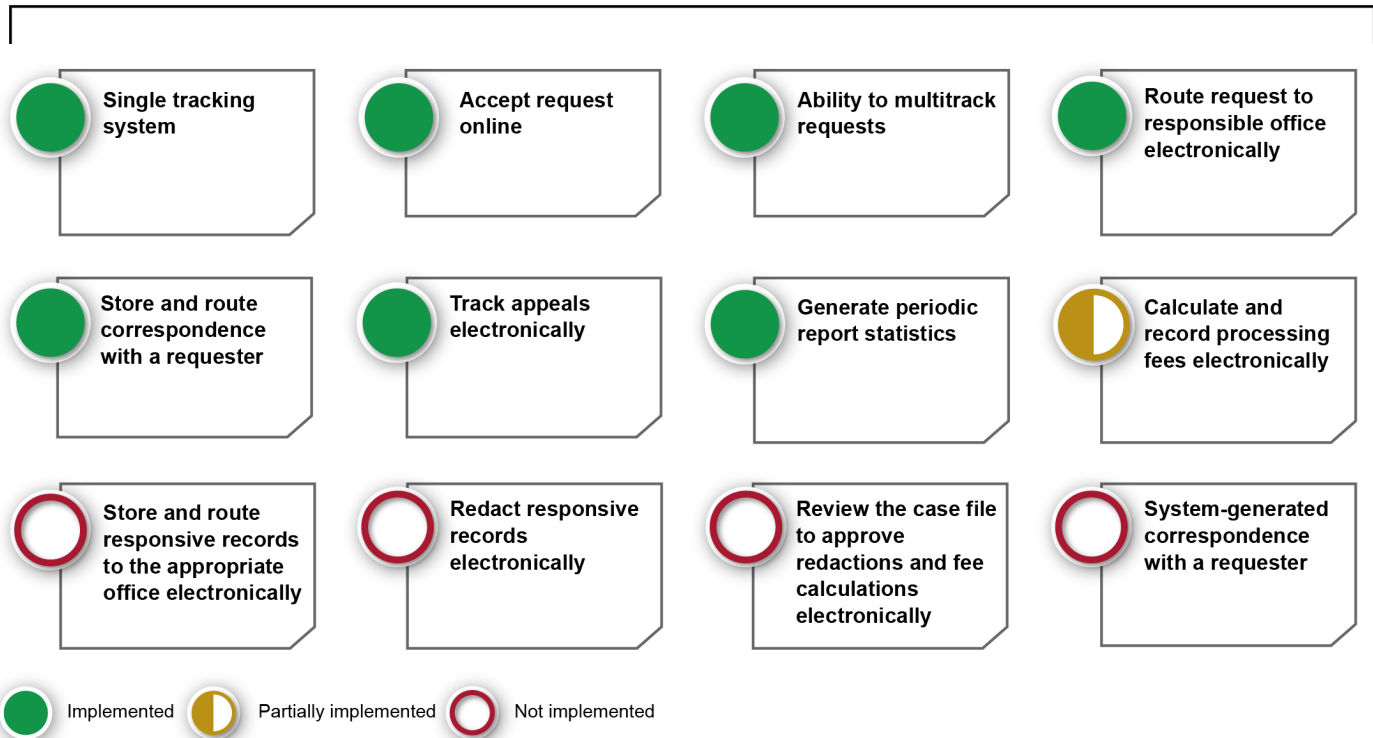
However, the department had not implemented 4 other recommended capabilities, and had partially implemented 1 capability. Specifically, the

department's automated FOIA tracking system lacked capabilities to store and route responsive records electronically, redact responsive records electronically, and review the case file to approve redactions and fee calculations electronically. Further, the department had not implemented the capability to generate correspondence to a requester. In addition, SIMS-FOIA partially included the recommended capability to calculate and record processing fees electronically. Specifically, the system could record fees electronically, but it could not calculate fees electronically.

Figure 2 illustrates the extent to which DOL had implemented recommended capabilities to enhance FOIA processing.

Figure 2: Extent to which Department of Labor Implemented Recommended Capabilities to Enhance Freedom of Information Act Processing

Recommended Capabilities



Source: GAO analysis of Department of Labor (DOL) data. | GAO 16-248

In discussing this matter, the OIS director and FOIA officials in the component offices stated that, since the current system generally meets statutory requirements, the department has not yet made improvements to the system to reflect the recommended capabilities. The officials said that they are aware of current system limitations and have begun researching various technologies to incorporate the remaining capabilities. Nevertheless, the officials said that, due to competing interests and resource needs, the department has made a decision to continue using SIMS-FOIA without these capabilities in the meantime. The officials did not provide a time frame for when the capabilities would be implemented. By implementing the additional recommended capabilities, the department has the opportunity to enhance its FOIA processing and, thus, improve the efficiency with which it can respond to information requests.

DOL and Its Components Prioritize FOIA Requests by Assigning Them to One of Three Processing Tracks

The FOIA statute allows agencies to establish multi-track processing of requests for records based on the amount of work or time (or both) involved in processing requests. Toward this end, DOL's FOIA regulation, supported by the department's Best Practices Processing Guide, provides for prioritizing FOIA requests into three processing tracks: simple, complex, and expedited.

According to the regulation and guide, although requests are generally required to be handled on a first-in, first-out basis, a component may use two or more processing tracks by distinguishing between simple and more complex²³ requests, based on the amount of work and/or time needed to process the requests. This is intended to allow the component to use its discretion to process simple, more manageable requests quickly, while taking more time to process larger, more complex requests that involve a voluminous amount of records and/or multiple components.

Also, according to the regulation and the guide, the component is to determine whether a request should be given expedited treatment and placed in an expedited track ahead of others already pending in the

²³Complex requests are requests that involve voluminous amount of records, various offices that might have responsive documents, information that is technical or difficult to understand, and the need to communicate with third parties, such as other agencies or owners of possible proprietary information.

processing queue, whenever it determines that one of the following conditions is met:

- There is an imminent threat to the life or physical safety of an individual.
- There is an urgent need to inform the public about an actual or alleged government activity and the requester is someone primarily engaged in the dissemination of information.
- Failure to disclose the requested records expeditiously will result in substantial loss of due process rights.
- The records sought relate to matters of widespread news interest that involve possible questions about the government's integrity.

Further, the regulation and guide state that the requester can submit a request for expedited processing at the time of the initial request or at any later time during the processing of the request. The component is to grant the request for expedited processing when the requester explains in detail the basis for the need to expedite the request and demonstrates a compelling need based on the criteria described above. Upon receiving a request for expedited processing, the component is responsible for deciding whether the request is to be expedited and for notifying the requester of the final decision within 10 calendar days.

The guide states that, when a request is submitted, the component's FOIA staff must identify the processing track to which it will be assigned (i.e., simple, complex, or expedited). According to OIS officials, the component FOIA processors assess whether requests are simple or complex based on their experience in handling requests and familiarity with requests that are submitted routinely. Further, according to the guide, FOIA processors assess whether requests are to be given expedited treatment whenever they determine that requests demonstrate a compelling need, such as when they pertain to an imminent threat to the life or physical safety of an individual.

All of the components had taken steps that followed the regulation and best practices guidance to prioritize the selected fiscal year 2014 FOIA requests. That is, as the components' FOIA processors logged in the requests, they assigned them to one of the three processing tracks. With the exception of the Office of the Inspector General, the components used SIMS-FOIA to designate the processing track for the requests. The OIG used its Office of Inspector General FOIA Tracking System to designate the processing track for requests.

In addition, 7 of the 23 components provided documentation describing additional component-specific actions that they had taken to help with prioritizing the requests. For example:

- The Veterans' Employment and Training Service developed a standard operating procedure that includes steps for multi-track processing. Specifically, this component places its simple requests in its fastest (non-expedited) track, and places its complex requests in its slowest track.
- The Wage and Hour Division provided its subcomponents with guidance issued in September 2015 that includes criteria for selecting a processing track in SIMS-FOIA. Specifically, according to this guidance, a request will be designated as complex when it requires redactions, involves two or more offices or programs to provide records, includes the review of 100 or more pages, or requires a search and review of over 10 hours, among other things. A request is designated as simple when it requires no redactions; involves 1 office or program; requires a review of 99 pages or less and fewer than 9.5 hours of searching; and when responsive records can be easily located on DOL's FOIA website. Further, the guidance states that all expedited requests must be approved by the component.
- The Mine Safety and Health Administration developed standard operating procedures in March 2012 that include instructions for its subcomponents to follow when tracking requests in SIMS-FOIA and requiring its field offices to notify its headquarters office prior to denying an expedited FOIA request.

Of the 16,792 requests that the department reported receiving in fiscal year 2015, the components prioritized and processed 7,203 simple requests (about 42 percent of the total requests processed), 9,785 complex requests (about 57 percent), and 108 expedited requests (less than 1 percent).

DOL Components Are Responding to Most FOIA Requests within the Statutory Time Frame, but Are Not Consistently Documenting the Rationale for and Notifying Requesters of Delays

As previously discussed, FOIA requires agencies to make a determination on whether to comply with a request generally within 20 working days of receiving the request and to immediately notify the requester of their determination. Toward this end, agencies are required to route misdirected requests to the internal component or office responsible for processing them within 10 working days of receipt. DOL’s Best Practices guide also recommends that components notify the requester when the need to consult with another component will delay a timely response to the initial FOIA request. SIMS-FOIA provides optional fields allowing components to record the fact that they sent the requester an acknowledgment or other interim response, or add other comments or explanations that caused a delay.

Of the 14,745 requests processed by the department between October 1, 2013, and September 30, 2014, components successfully routed an estimated 92 percent of requests to the appropriate component offices within the 10-day time frame, as required by FOIA. However, an estimated 8 percent of requests were not routed to the appropriate offices within 10 days. Further, the components processed an estimated 76 percent of the requests within the statutory time frame of 20 working days. Table 4 shows the overall estimate of timeliness in responding to the population of 14,745 FOIA requests for the department in fiscal year 2014, and appendix IV provides further details on the department’s timeliness in processing FOIA requests from our sample of 258 requests.

Table 4: Population Estimates for Timeliness of Department of Labor Processing of Fiscal Year 2014 Freedom of Information Act Requests

Measure of timeliness	Population estimate		
	Total	Simple	Complex
Percentage of requests allocated within 10 Days	92%	94%	90%
Percentage of requests processed within 20 Days	76%	75%	77%

Source: GAO analysis of Department of Labor data. | GAO-16-248

The department did not respond to the requester within the 20-day time frame for the remaining estimated 24 percent of requests processed, as reflected in the following examples:

- Although the Office of Information Services routed 2 out of 3 selected requests to the appropriate component (the Office of Assistant Secretary for Policy) within 10 days, one request was initially assigned

to the wrong component (the Employment and Training Administration). Once the Office of Assistant Secretary for Policy received the request, it took 315 days to process the request and provide the records to the requester.

- The Office of Congressional and Intergovernmental Affairs responded to FOIA requesters within the required 20 days for 3 of 10 selected requests. For one request, the component took 154 days (about 5 months) to provide the requester with a response. Specifically, the request was received by the original office and was routed within 10 days, as required by law, to the office responsible for processing the request. However, it took the office that was responsible for processing the request 154 days to provide the response to the requester.
- The Office of the Secretary responded to FOIA requesters within the required 20 days for 3 out of 10 selected requests. In one instance, the component that was responsible for processing the request took 67 days, or over 2 months, to respond to the requester. Specifically, the department received the request in May 2014 and it was forwarded to the Office of the Secretary on the same day. However, because of the complex nature of the request, the Office of the Secretary had to coordinate with 6 other components, resulting in a delayed response to the requester.

For the estimated 8 percent of requests that were not sent to the appropriate office within 10 days and the estimated 24 percent for which there were not timely responses to the requesters, the components did not document the rationales for the delays in SIMS-FOIA or notify the requesters of the delays. Agency officials attributed the delays to multiple components and subcomponents processing various parts of a request, as well as the time required to search for, review, and redact the exempted information from large volumes of records. In addition, DOL's FOIA Public Liaison explained that SIMS-FOIA only identifies the tracking numbers for the 10 oldest requests, and if the case does not fall within the 10 oldest requests, then the FOIA staff may not be able to find and provide a rationale for the delay. In addition, the liaison noted that there is no DOL requirement for staff to document the rationale for the delays in SIMS-FOIA and to notify requesters regarding delayed responses. However, the system allows the user the option to record the rationale. Without documenting the rationale for the delays and notifying FOIA requesters regarding delayed responses, however, the department lacks

the means to ensure that requesters are kept abreast of the status of their FOIA requests.

Most FOIA Appeals Are Not Processed Within the Statutory 20-Day Time Frame

According to DOL's FOIA regulation, after an agency responds to a request, the requester has the right to file an administrative appeal within 90 days if she or he disagrees with the agency's decision. Agencies are then required to respond to the requester with a decision regarding the administrative appeal within 20 working days.

According to DOL's 2015 FOIA Annual Report, in fiscal year 2015, the department received 404 appeals and processed 297. In addition, the department reported that it had not responded to appeals within the statutory time frame of 20 working days, thus contributing to 405 backlogged appeals at the department. DOL officials in the office of the Counsel for FOIA Appeals, Federal Records Act, and Paperwork Reduction Act—the office responsible for processing administrative appeals—noted that the high number of unprocessed appeals was due to a substantial increase in the number of incoming FOIA appeals received and a decrease in the number of staff available to process the appeals. Specifically, the number of attorneys available to process FOIA appeals decreased from 3 attorneys to 1 from 2012 through June 2015, while the number of backlogged appeals increased from 139 to 405 within the same period of time.

In its technical comments on a draft of this report, DOL stated that it had taken various actions to reduce backlogged appeals. Specifically, it stated that DOL staff from other agency components had been detailed to assist with processing appeals. Further, similar appeals were grouped together to provide a response and staff communicated with requesters about the scope of their appeals or their continued interest in records. In addition, FOIA appeals were assigned to new attorneys in a specialized honors program,²⁴ and the department hired an additional attorney to address the appeals.

²⁴According to the DOL website, the Honors Program in the Office of the Solicitor at DOL provides professional opportunities for outstanding law school graduates. Honors Program attorneys work in the Solicitor's Office either at the department's headquarters in Washington, D.C., or in one of seven regional offices, gaining exposure to a range of legal work in one of the government's legal offices.

Continuing to take such steps to reduce the number of backlogged appeals will be important to help ensure that the department is able to meet its statutory obligation to respond to appeals within 20 working days. Furthermore, by continuing to address its appeals backlog, the department may reduce the likelihood that lawsuits will be filed due to requesters not receiving responses to their administrative appeals (such as discussed later in this report).

DOL Received Sixty-Eight FOIA-Related Lawsuits; Results of Lawsuits Varied, and Requesters Were Not Notified of Mediation Services as an Alternative to Litigation

From January 2005 through December 2014, 68 FOIA-related lawsuits were filed against DOL, primarily as a result of the department either failing to respond to requests or because it withheld certain requested information based on exemptions. Court decisions on these lawsuits were mixed—with rulings being made in favor of the department, both for the department and the requester, and in favor of the requester. In addition, some lawsuits were settled with agreement to release information and/or to award attorney's fees and court costs to the requester. Among these settlements, courts dismissed the majority of the lawsuits based on terms agreed to by the department and the requester. While Department of Justice guidance issued in July 2010 encourages agencies to notify requesters of available mediation services as an alternative to pursuing litigation, DOL had not taken steps to inform requesters of such services. Doing so could help prevent requesters and the department from being involved in costly litigation and improve the efficiency of FOIA-processing activities.

Results of Lawsuits Varied among Cases Litigated

As previously mentioned, FOIA allows a requester to challenge an agency's final decision in federal court through a lawsuit or to treat an agency's failure to respond within the statutory time frames as a denial of the request, in order to file a lawsuit. In addition, the act states that the court may assess against the government reasonable attorney's fees and other litigation costs incurred in a FOIA lawsuit if the requester has obtained relief through either (1) a judicial order, or an enforceable written agreement or consent decree; or (2) a voluntary or unilateral change in position by the agency, if the complainant's claim is not insubstantial.

The 68 lawsuits were brought against DOL because it either did not provide a timely response to a FOIA request, or because the requester disagreed with DOL's response, usually as a result of the department having withheld records. Of these lawsuits, the court ruled in favor of the department in 18 cases, and jointly in favor of both the department and

the requester in 1 case. In addition, among 47 lawsuits, the requesters received relief either as a result of (1) the courts rendering decisions in favor of the requesters (3 lawsuits) or (2) the department and the requesters establishing settlement agreements that awarded attorney’s fees and other costs to the requesters or resulted in the department potentially releasing additional information (44 lawsuits). Two lawsuits were undecided as of April 2016.

Table 5 summarizes the outcomes of the 68 lawsuits, and the discussion that follows presents examples of the lawsuits filed and the decisions rendered.

Table 5: Outcomes of Freedom of Information Act Lawsuits Brought against the Department of Labor (DOL) from January 2005–December 2014

Outcome of lawsuit	Number of decisions
Court Rendered Decisions	
In favor of DOL	18
In favor of DOL and the requester	1
In favor of requester	3
Lawsuits settled	44
Undecided	2
Total lawsuits filed	68

Source: GAO analysis of lawsuit documentation. | GAO-16-248.

Court Decisions Rendered

In Favor of DOL

Of the 18 lawsuits decided in favor of DOL, 7 were filed because the department did not respond to the initial FOIA request or administrative appeal. The other 11 were due to requesters disagreeing with DOL’s decision not to release information, or the requesters asking for more information than was originally released. In these cases, the department may have applied certain exemptions to withhold documents (see appendix II for the nine specific categories that exempt an agency from disclosing information). The following examples describe these lawsuits:

- One lawsuit was filed because a requester had asked for records related to being terminated by his employer for refusing to work under alleged unsafe and illegal conditions that violated the Federal Mine Safety and Health Act of 1977. However, the Mine Safety and Health Administration withheld information based on the exemptions related

to interagency or intra-agency memorandums that are not available by law to a party other than an agency in litigation with that agency, for law enforcement purposes related to unwarranted invasion of personal privacy, and disclosing the identity of a confidential source. In October 2004, the requester submitted an administrative appeal in response to the decision. Five months after DOL's acknowledgement of the administrative appeal, the requester had not received a response and thus filed a lawsuit in March 2005. In deciding in favor of DOL, the court upheld the department's use of the exemptions to withhold information.

- As the basis for another lawsuit, a request was initially submitted for a Mine Safety and Health Administration investigation report. The department released only a portion of the requested records. In February 2009, the requester filed an administrative appeal. In November 2009, DOL released additional information and withheld information citing the law enforcement privacy and interagency and intra-agency memorandums or letters exemptions. The requester disagreed with the department's final decision to withhold information and filed a lawsuit in July 2010. The court upheld the department's decision.
- One lawsuit involved eight requesters seeking information related to the functionality of an Office of Workers' Compensation Program computer program that is used to ensure consistent rotation among physicians by specific zip codes. The Office of Workers' Compensation Program withheld information based on an exemption regarding confidential commercial information and the exemption related to an unwarranted invasion of personal privacy. All eight requesters filed separate administrative appeals from December 2009 through November 2012, to which the department did not respond. As a result, the eight requesters filed a joint lawsuit in July 2013. The court decided in favor of the department's decision to not disclose the information due to the exemptions cited.
- In April 2009, records were requested related to the activities and communications between the Secretary and Deputy Secretary of Labor and various labor organizations. In late April 2009, DOL acknowledged receipt of the FOIA request, but decided that it would not provide information. In late September 2009, the requester filed an administrative appeal. Over a month later, in early November, DOL confirmed receipt of the administrative appeal but, again, did not provide information. By late November 2009, the requester had not received any information or requests for a time extension from the department and filed a legal complaint. The court decided in favor of

the department, finding that it had properly withheld information on the basis of several exemptions.

In Favor of DOL and the Requester

One lawsuit—filed because the department withheld certain information and did not respond to the administrative appeal—was ruled both in favor of DOL and in favor of the requester. As a result, additional information was released to the requester. Specifically, in November 2007, a requester asked the Occupational Safety and Health Administration to provide accident investigation information related to a fatal accident. The Occupational Safety and Health Administration responded to the initial request by providing over 100 pages of documentation, but it withheld other documentation, applying the personnel and medical information exemption. In February 2008, the requester filed an administrative appeal. By February 2009, over a year later, DOL had not responded to the administrative appeal and the requester filed a lawsuit. In March 2010, the court decided in part for the department and in part for the requester. DOL was required to disclose portions of witness statements that were previously redacted; however, the court determined that the department could apply an exemption to additional records to withhold specific law enforcement information.

In Favor of the Requester

For 3 lawsuits, the requesters received relief as a result of the courts rendering decisions in their favor.

- In March 2005, records were requested from the Occupational Safety and Health Administration regarding the 2003 “Lost Work Day Illness and Injury Rates” for all worksites that had the Standard Industrial Classification code of 80.²⁵ In prior years, the Occupational Safety and Health Administration had provided these records to requesters for previous reporting periods. However, the Occupational Safety and Health Administration denied this request, stating that releasing the information would interfere with law enforcement proceedings. In May

²⁵The Occupational Safety and Health Administration defines the Standard Industrial Code of 80 to include establishments primarily engaged in furnishing medical, surgical, and other health services to persons.

2005, the requester submitted an administrative appeal. However, by October 2005, the requester had not received a response to the administrative appeal and filed a lawsuit. The court decided in favor of the requester. However, details on the specific relief that the department provided to the requester in response to this ruling were not contained in available court documentation, and DOL officials could not provide such details. DOL appealed the decision, but the court dismissed its appeal.

- In June 2005, the Occupational Safety and Health Administration received a request for records related to the possible exposure of inspectors and employees to unhealthy/hazardous levels of beryllium. The department denied the request and in August 2005 the requester submitted an administrative appeal. The requester also submitted a second FOIA request for records related to quantifying the airborne and surface concentrations of chemical substances in workplaces where the Occupational Safety and Health Administration's inspectors obtain samples. After 3 months (by November 2005), the requester had not received a response to the administrative appeal and filed a lawsuit. The court decided in favor of the requester. DOL appealed the decision but the court dismissed the appeal and, according to a FOIA Counsel official, the department then released the information to the requester.
- A request was submitted to the Mine Safety and Health Administration in September 2007 for records regarding the August 2007 Crandall Canyon Mine collapse that resulted in the death of nine miners and rescuers. In October 2007, the requester offered to accept a partial response to the request as a temporary compromise while awaiting additional responsive documentation. After 3 months, the Mine Safety and Health Administration released more documentation, but withheld certain other documents, citing several exemptions. In May 2008, the requester submitted an administrative appeal in response to the Mine Safety and Health Administration's use of the exemption for interagency or intra-agency memorandums, and an additional exemption for law enforcement proceedings. In June 2008, a month after the administrative appeal was submitted, DOL acknowledged the appeal, but did not respond by making a determination, as required by FOIA. In November 2008, 6 months after submitting the administrative appeal, the requester still had not received a response and filed a lawsuit. The court decided in favor of the requester and ordered DOL to conduct an additional search for all non-exempt information. The department complied by disclosing additional information. The

department and the requester later agreed to dismiss the lawsuit and waive any right to fees.

Lawsuits Settled

Forty-four lawsuits resulted in settlement agreements between DOL and the requesters. These included 5 lawsuits in which the department agreed to pay certain amounts of the requesters' attorney's fees and other costs, and 2 lawsuits in which the department agreed to release additional information to the requesters. For 37 other lawsuits, information on the specific nature and outcomes of the settlements was not available from either DOL's FOIA official or the related court documentation.

For 5 lawsuits that involved settlements, the department agreed to pay to the requesters approximately \$97,475 in attorney's fees, expenses, and costs arising from the lawsuits.²⁶ These lawsuits are summarized below.

- A lawsuit was filed as a result of the Wage and Hour Division not responding to an initial FOIA request sent to the department in July 2010. The initial request was submitted for records related to complaints made by undocumented workers under the Wage and Hour Division's "We Can Help" Program. After 2 months (by September 2010), DOL had not responded to the request and the requester filed a lawsuit. DOL and the requester entered into a settlement agreement resulting in the department agreeing to pay \$350 for attorney's fees and costs arising from the lawsuit.
- A lawsuit was filed after a requester had, in July 2010, sent 2 requests for information related to the Occupational Safety and Health Administration's review of its whistleblower protection programs. DOL denied one request due to the exemption to withhold interagency or intra-agency memorandums or letters. In addition, the department did not respond to the second request. In August 2010, the requester submitted two administrative appeals to compel a response. After 2 months, the department had not responded to the administrative appeals and the requester filed a lawsuit in October 2010. DOL and the requester entered into a settlement agreement that dismissed the lawsuit and, according to a FOIA Counsel official, resulted in the department releasing additional responsive records (6,000 pages in

²⁶Statements from a FOIA Counsel official and documents associated with three of the lawsuits indicated that the monetary awards were in conjunction with the department also releasing additional information.

full or redacted). In addition, the department agreed to pay the requester \$8,250 for attorney's fees, expenses, and costs arising from the lawsuit.

- As the basis for another lawsuit, a FOIA requester had sought information from the department's Office of Labor-Management Standards in December 2009 that related to a union's trusteeship.²⁷ Initially, in March 2010, the Office of Labor-Management Standards informed the requester by e-mail that it had compiled 8,500 pages of responsive documents. However, after corresponding with the office until July 2010, the requester filed an administrative appeal letter due to not receiving any information. Subsequently, 10 months after the initial FOIA request (in October 2010), the requester filed a lawsuit as a result of not having received a response to the administrative appeal, any responsive documentation, or an explanation for the delay in providing the documentation. According to a DOL FOIA Counsel official, the department subsequently processed the request and the requester entered into a settlement agreement with DOL resulting in the lawsuit being dismissed, and with the department paying \$7,500 for the requester's attorney fees, expenses, and costs arising from the lawsuit.
- In February 2013, a FOIA request was submitted for the Wage and Hour Division's guidance documents regarding "hot goods objections" investigative files.²⁸ DOL denied the request, citing the exemption related to information for law enforcement purposes. In April 2013, the requester submitted an administrative appeal regarding the previous decision. A month after submitting the administrative appeal, the requester had not received a response from the department and filed a lawsuit in May 2013. The department and the requester then entered into a settlement agreement, resulting in the lawsuit being dismissed and with the department paying \$30,000 for attorney's fees, expenses, and costs arising from the lawsuit.

²⁷The Office of Labor-Management Standards defines a trusteeship as supervision or control whereby a labor organization suspends the autonomy of a subordinate body under its constitution or bylaws.

²⁸A hot goods objection allows the government to prohibit the shipment, offer of shipment, or sale in interstate commerce, of any goods allegedly produced in violation of the minimum wage, overtime pay, or child labor laws.

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- In a lawsuit filed against the department's Employment and Training Administration in March 2013, the requester had not received any documents after a year of correspondence with DOL. From March 2013 through August 2013, the department provided 217 responsive records in full to the requester, redacted 121 records, and withheld in full 151 records. The court decided in favor of the requester and, according to a FOIA Counsel official, ordered the department to conduct an additional search for responsive records. Nevertheless, the official stated that the requester and the department subsequently reached a settlement agreement, in which the department provided about 900 responsive records and agreed to pay the requester \$51,375 for attorney's fees, expenses, and costs.

In addition to the above, 2 lawsuits were settled without the award of attorney's fees and other costs, but with the department agreeing to release additional information to the requesters. The following summarizes these lawsuits.

- A lawsuit was filed as a result of a request that was submitted to the Occupational Safety and Health Administration in August 2011 related to a wrongful death lawsuit involving the requester. The Occupational Safety and Health Administration initially provided some information, but withheld other information based on the law enforcement exemption. Subsequently, in November 2011, the requester appealed the decision. In December 2011, DOL responded to the administrative appeal and upheld the Occupational Safety and Health Administration's decision to withhold information. The requester disagreed with DOL's response and filed a lawsuit in September 2012. DOL released additional information after the lawsuit was filed. The requester acknowledged receiving the information provided by DOL after the lawsuit was filed and agreed to settle and dismiss the lawsuit.
- In another case, the requester asked the department's Office of the Solicitor for records related to a trip taken by the Secretary of Labor, including information on funding, internal memoranda and communications, and travel and security costs. Nine months after the request, the requester had not received any response from DOL and filed a lawsuit in March 2013. DOL provided information to the requester after the lawsuit was filed. In September 2013, after reviewing DOL's documentation, the requester agreed with the court's decision to settle and dismiss the case. The court dismissed the case in January 2014.

As previously noted, details on the results of the 37 other lawsuits were lacking. In particular, the department's Counsel for FOIA and Information Law could not provide details on what, if any, information and/or other relief were provided as part of the settlements. Further, the available court documentation did not include information on whether or not information was released to the requester; rather, the available documentation simply noted that the cases were dismissed.

Decisions Not Yet Rendered

As of April 2016, courts had not rendered decisions on 2 of the 68 lawsuits.

- A lawsuit was filed pertaining to an expedited request that was submitted to the department's Office of the Assistant Secretary for Administration and Management in July 2013 for records related to the use of alias e-mail addresses for DOL political appointees and a request to search personal e-mails of senior DOL officials for evidence of the use of personal e-mail to conduct official business. After 2 months, the requester had not received any response from the department and filed a lawsuit in September 2013. However, as of April 2016, the case was still pending.
- Lastly, a lawsuit was filed as a result of a FOIA request that was submitted in December 2013 related to the requester's Federal Mine Safety and Health Act anti-retaliation complaint investigation file. In January 2014, the department sent an acknowledgement letter stating that, due to "unusual circumstances surrounding the records" being sought, it would take about 90 working days to fulfill the request and, therefore, the statutory time limits for processing the request could not be met. According to officials from the Mine Safety and Health Administration, the requester was provided the opportunity to modify the scope of the request so that it could be processed within the statutory time limits, but did not respond to this offer. By April 2014 (4 months after the request was submitted), the requester had not received any information and filed a legal complaint. In May 2014, DOL provided certain responsive information, but withheld other records due to several exemptions. In December 2014, pursuant to a change in the Mine Safety and Health Administration's FOIA policy, the department sent additional responsive information after reviewing the earlier response and determining that additional information were releasable. In July 2015, the court asked for the investigation file related to the requester's Mine Safety and Health Administration complaint, and as of April 2016 the case was still pending.

DOL Does Not Notify Requesters of National Archives and Records Administration's Mediation Services as an Alternative to Litigation

The OPEN Government Act of 2007 established the Office of Government Information Services within the National Archives and Records Administration to oversee and assist agencies in implementing FOIA. Among its responsibilities, the office offers mediation services to resolve disputes between requesters and federal agencies as an alternative to litigation. Office of Government Information Services was required to offer mediation services to resolve disputes between FOIA requesters and agencies.

According to Department of Justice guidance issued in July 2010, agencies should include in their final agency responses to requesters a standard paragraph notifying the requesters of the mediation services and providing contact information for the Office of Government Information Services. The guidance states that this notification should be provided at the conclusion of the administrative process within the agency (i.e., as part of the agency's final response on the administrative appeal). This is intended to allow requesters to first exhaust their administrative remedies within the agency. The guidance also states that agencies should provide requesters with notification of their right to seek judicial review.

Since the issuance of the guidance in July 2010, none of the 12 FOIA lawsuits that we reviewed involving administrative appeals had corresponding response letters that included language notifying requesters of the Office of Government Information Services' mediation services. Moreover, the department had not issued guidance to its components on including such language in the letters. Thus, requesters may have been unaware of the mediation services offered by the office as an alternative to deciding to litigate their FOIA case.

Officials representing the department's Counsel for FOIA Appeals acknowledged that steps had not been taken to ensure that the language would be included in response letters. They stated that the Counsel for FOIA Appeals planned to consult with the Department of Justice's Office of Information Policy on how to incorporate the language and on how the department should develop procedures for working with the Office of Government Information Services to mediate disputes with FOIA requesters. However, they did not identify a time frame for doing so.

Until it incorporates notification of the Office of Government Information Services' mediation services in final response letters, DOL may be missing opportunities to resolve FOIA disputes through mediation and, thereby, reduce the lawsuits filed. Accordingly, the department may miss

the opportunity to save time and money associated with its FOIA operations.

Conclusions

DOL has implemented a process to manage, prioritize, and respond to its FOIA requests. However, opportunities exist to improve its process. Specifically, because it has not updated its FOIA regulation to reflect recent changes to its process, the department may be hindering the public's use of that process. Also, while the department uses a system to track its FOIA requests and a portal to allow requesters to track the status of requests online, the system and portal lack certain required and recommended capabilities that could enhance the management and processing of requests. Absent capabilities consistent with Section 508 of the Rehabilitation Act (as amended), the department is not implementing the federal requirement to make its electronic information accessible to people with disabilities. In addition, by implementing recommended capabilities, the department could be better positioned to ensure the efficiency of its FOIA processing efforts. Further, although the department responded to the majority of its fiscal year 2014 FOIA requests within the time frame mandated by law, it has not consistently documented the reasons for delays in its automated FOIA tracking system or notified requesters about them.

A majority of lawsuits brought against the department from January 2005 through December 2014 either resulted from the department failing to respond to requests or because it withheld certain information pertaining to requests. By ensuring that requesters are made aware of mediation services offered by the National Archives and Records Administration's Office of Government Information Services as an alternative to litigation, DOL may be able to avoid future lawsuits, thus saving resources.

Recommendations for Executive Action

To improve DOL's management of FOIA requests, we recommend that the Secretary of Labor direct the Chief FOIA Officer to take the following five actions:

- Establish a time frame for finalizing and then issue an updated FOIA regulation.
- Establish a time frame for implementing, and take actions to implement, section 508 requirements in the department's FOIA system and online portal.
- Establish a time frame for implementing, and take actions to fully implement, recommended best practice capabilities for enhanced

processing of requests in the department's FOIA system and online portal.

- Require components to document in SIMS-FOIA the rationales for delays in responding to FOIA requests, and to notify requesters of the delayed responses when processing requests.
- Establish a time frame for consulting with the Department of Justice's Office of Information Policy on including language in DOL's response letters to administrative appeals notifying requesters of the National Archives and Records Administration's Office of Government Information Services' mediation services as an alternative to litigation, and then ensure that the department includes the language in the letters.

Agency Comments and Our Evaluation

We received written comments on a draft of this report from DOL and the National Archives and Records Administration. In DOL's comments, signed by the Chief FOIA Officer (and reprinted in appendix V), the department concurred with all five recommendations and agreed that it can improve the management of its FOIA program. The department identified various actions that it had taken or planned to address the recommendations. For example, concerning our recommendation to update its FOIA regulation, the department stated that it has drafted a Notice of Proposed Rulemaking to update the regulation and expects to publish the final regulation by the end of 2016.

In addition, relevant to our recommendation, the department stated that it is taking actions to review and modify the text and formatting of its public FOIA portal to comply with the provisions of Section 508 of the Rehabilitation Act, and expects to have changes in place by September 2016. With regard to its automated FOIA tracking system, the department stated that the Office of the Assistant Secretary for Administration and Management determined that it can fulfill the requirements of Section 508 by providing individualized accommodations to any DOL FOIA staff with vision or other accommodation needs who require access to the system. For example, the department noted that large screen magnifiers and verbal description tools can be provided to staff that require such accommodations. The department added that it would continue to ensure that Section 508 compliance is included as a necessary element in planning for any future SIMS-FOIA replacement or successor system.

Further, with regard to implementing recommended best practices, the department stated that it continues to monitor proposed FOIA legislation and Department of Justice guidance so that it can assess the feasibility

and business need for investment in technology changes. The department said that it will ensure that the recommended best practice capabilities for enhanced FOIA processing are considered as a part of its planning for any future SIMS-FOIA replacement or successor system.

Regarding our recommendation to document the rationale for delays in responding to FOIA requests, the department stated that its Office of Information Services plans to issue implementing guidance to address this matter. The Office of Information Services also is to provide follow-up training on the guidance after it is finalized and disseminated, a step which it expects to have completed by the end of September 2016.

Lastly, in response to our recommendation on notifying requesters of the mediation services offered by the Office of Government Information Services, the department stated that it consulted with the Department of Justice Office of Information Policy on March 7, 2016 and, as of March 31, 2016, had begun including language in its final appeal decisions informing requesters of the mediation services. If the department follows through to ensure effective implementation of its actions on our five recommendations, it should be better positioned to improve and successfully carry out the management of its FOIA program.

Beyond DOL, in comments signed by the Archivist of the United States, the National Archives and Records Administration expressed appreciation for our review and for our recognizing the importance of DOL including notification of the Office of Government Information Services' mediation services in its final appeal letters. The National Archives and Records Administration's comments are reprinted in appendix VI.

In addition to the aforementioned written comments, we received technical comments via e-mail from the Director of the Office of Information Services at DOL, and the Audit Liaisons from the Department of Justice and the National Archives and Records Administration. We have incorporated these comments, as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees, the Secretary of Labor, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-6304 or melvin@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VII.

Valerie C. Melvin

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

Appendix I: Objectives, Scope, and Methodology

Our objectives were to determine (1) how the Department of Labor (DOL) and its components manage and process Freedom of Information Act (FOIA) requests, including how they prioritize requests, and the extent that responses to requests have been timely; and (2) how many lawsuits DOL has been subject to arising from FOIA requests, and the results of those lawsuits.

To address the study objectives, we collected and analyzed published statistics from the department's fiscal year 2014 and fiscal year 2015 FOIA annual reports, and other documentation from the department's central FOIA office, Office of Information Services, such as the October 2010 Desk Reference Guide and August 2013 Best Practices Guide. To determine the responsibilities of the central FOIA office and the components in managing and processing requests, we reviewed organization charts; the department's policies and procedures; and information discussed in the FOIA annual reports, the DOL Chief FOIA Officer reports, and other agency documentation. We also conducted interviews with responsible officials in the Office of the Solicitor and the department's 23 component offices.¹

To facilitate our understanding of how the central FOIA office and the components manage, prioritize, and process FOIA requests, we developed and administered a questionnaire to the 23 components in June 2015. We received responses from all of the components. To ensure that our questions were clear and logical and that respondents could answer the questions without undue burden, we provided the draft questionnaire to the department's Office of Information Services and obtained and incorporated the office's comments on the questionnaire in advance of sending it to the 23 components.

¹The 23 Department of Labor components are Adjudicatory Boards, Office of Administrative Law Judges, Office of the Assistant Secretary for Policy, Bureau of Labor Statistics, Office of the Chief Financial Officer, Employee Benefits Security Administration, Employment and Training Administration, Bureau of International Labor Affairs, Mine Safety and Health Administration, Office of the Assistant Secretary for Administration and Management, Office of Congressional and Intergovernmental Affairs, Office of Disability Employment Policy, Office of Federal Contract Compliance Programs, Office of Inspector General, Office of Labor Management Standards, Office of Public Affairs, Office of the Secretary, Occupational Safety and Health Administration, Office of Workers' Compensation Programs, Office of the Solicitor, Veterans' Employment and Training Service, Women's Bureau, and the Wage and Hour Division.

The practical difficulties of conducting any questionnaire may introduce errors, commonly referred to as non-sampling errors. For example, difficulties in how a particular question is interpreted, in the sources of information available to respondents, or in how the data were entered into a database or were analyzed can introduce unwanted variability into the results. With this questionnaire, we took a number of steps to minimize these errors. For example, our questionnaire was developed in collaboration with a GAO methodologist.

The results of our questionnaire were summarized to describe component efforts to manage, prioritize, and process FOIA requests. We also reviewed criteria used by the central office and components to prioritize requests, and assessed current procedures and practices against the criteria. Further, we reviewed available statistics on FOIA processing timeliness. The scope of our work focused on the department's central tracking system and public portal, but did not include examining other systems, such as those used by the Inspector General and for separate FOIA appeals tracking.

To determine to what extent the responses to FOIA requests have been timely, DOL provided a list of 14,745 requests that had been received in the department as of October 1, 2013, and that had been fully processed by September 30, 2014. Of that total, we randomly selected a representative sample of 258 requests. In order to make the random selection, we first sorted the data we obtained based on component, process track, and whether the request was delayed or on time.² We grouped the requests by their individual process track. For example, each closed request has a process track of simple,³ complex,⁴ or expedited.⁵

²A process track is defined as the request being designated as a simple, complex, or expedited.

³Simple Request: a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.

⁴Complex Request: a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.

⁵Expedited Processing: an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.

To ensure that all components were included in the sample, we divided the 23 components in the sample frame into two strata: components with 10 or more requests (stratum 1) and components with fewer than 10 requests (stratum 2). We selected all cases per component in stratum 2. We chose 96 requests from stratum 1 and allocated those 96 requests according to the number of requests. We also wanted to ensure a minimum sample of 10 requests per component in stratum 1. This resulted in a total sample of 258 requests, as reflected in table 6.

Table 6: Number of Fiscal Year 2014 Freedom of Information Act Requests Sampled from Department of Labor Components

Stratum	Component	Population count	Population percent	Sample count
1	Occupational Safety and Health Administration	8,040	54.5	51
1	Wage and Hour Division	2,504	17.0	16
1	Mine Safety and Health Administration	1,494	10.1	10
1	Employment and Training Administration	1,067	7.2	10
1	Office of Workers' Compensation Programs	345	2.3	10
1	Employee Benefits Security Administration	255	1.7	10
1	Office of the Assistant Secretary for Administration and Management	175	1.2	10
1	Office of Federal Contract Compliance Programs	157	1.1	10
1	Office of Administrative Law Judges	154	1.0	10
1	Veterans' Employment and Training Service	133	0.9	10
1	Office of Labor Management Standards	84	0.6	10
1	Office of the Solicitor	83	0.6	10
1	Office of Inspector General	72	0.5	10
1	Adjudicatory Boards	52	0.4	10
1	Bureau of International Labor Affairs	27	0.2	10
1	Office of the Chief Financial Officer	25	0.2	10
1	Office of Congressional and Intergovernmental Affairs	23	0.2	10
1	Office of the Secretary	24	0.2	10
2	Bureau of International Labor Affairs	8	0.1	8
2	Women's Bureau	8	0.1	8
2	Office of Public Affairs	7	0.0	7
2	Office of Disability Employment Policy	5	0.0	5
2	Office of the Assistant Secretary for Policy	3	0.0	3
Total		14,745	100.1	258

Source: GAO analysis of Department of Labor data. | GAO-16-248

This methodology was used to yield a pre-determined precision level on population estimates while minimizing the sample size or the cost. In addition, it allowed us to measure whether the 258 requests were processed in a timely manner. Because we followed a random selection of the sample, we are able to make projections to the population. The results of our sample are generalizable to the population of FOIA requests processed by the department as of September 30, 2014. All percentage estimates from our sample have margins of error at the 95 percent confidence level of plus or minus 15 percentage points or less, unless otherwise noted.

To estimate the population percentage of requests that were responded to within 20 days, the sample data are weighted to make them representative of the population. The weights are developed at the stratum level.

Our random sample is only one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval of plus or minus 15 percentage points or less, unless otherwise noted. This is the interval that would contain the actual population value for 95 percent of the samples that we could have drawn.

To assess the reliability of the data we received, we supplemented our analysis with interviews of FOIA officials in the department's Office of the Solicitor and Office of Information Services, as well as component officials, regarding their responsibilities and management practices. These officials included the DOL FOIA Public Liaison, the Director of the Office of Information Services, and the Director of the Office of the Solicitor. We also electronically tested the data and found them to be sufficiently reliable for purposes of our reporting objectives.

To determine the number of delayed requests, we compared the date of receipt,⁶ date assigned to agency,⁷ FOIA start date,⁸ and response date⁹

⁶Date of receipt in DOL: This is the date that the letter arrives at the first office when it comes to DOL.

⁷Date assigned to agency: This is the date that the appropriate office receives the FOIA request.

field of each resolved request in the Secretary's Information Management System for FOIA (SIMS-FOIA). To determine whether the request was forwarded to the appropriate office for processing within the statutory time frame of 10 working days, we reviewed the "date assigned to agency" field in SIMS-FOIA against the "date of receipt in DOL" field.¹⁰ To determine whether the department responded to the requester within 20 working days, we reviewed the "date assigned – FOIA start date" field and compared it to the latest "response date" field. In addition, we reviewed other available documentation, including SIMS-FOIA snapshots and all documentation associated with each of the 258 resolved requests. We also reviewed data from SIMS-FOIA to identify any documentation of delays in processing the requests, reasons for the delays, and any actions taken by the department to notify requesters of delays.

To determine the number of FOIA lawsuits filed against the department, we reviewed relevant information that spanned portions of the prior and current administrations (January 2005 through December 2014). We obtained information on the lawsuits from DOL and the Department of Justice, and through the Public Access to Court Electronic Records (PACER) system.¹¹

Specifically, we reviewed DOL documentation that discussed its FOIA litigation, settlements, and legal decisions made from January 2005 through December 2014. In addition, we reviewed Department of Justice documentation that included a listing of DOL's FOIA litigation cases, attorney costs and fees assessed by the courts, and court decisions made from January 2005 through December 2014. We reviewed and analyzed the documentation to confirm that all lawsuits were FOIA-related and included the department or a component as a defendant. We also reviewed the documentation to determine the reason the lawsuit was

⁸FOIA start date: This is the date when the official clock begins for the 20 working day response time frame.

⁹Response date: This field asks for the date the request is resolved, even if the component did not make the "decision" to release documents.

¹⁰FOIA requires agencies to route the requests to the office(s) responsible for processing them within 10 working days of receipt.

¹¹The Public Access to Court Electronic Records system is an electronic public access service provided by the federal judiciary that allows users to obtain case and docket information online from federal appellate and district courts.

brought to litigation and the resulting court decision. Further, we interviewed agency officials from the Department of Justice's Civil Division and Office of Information Policy, as well as from DOL's Management and Administrative Legal Services Division, to discuss their processes regarding litigating FOIA cases and the results of the cases. In selected cases, DOL did not have complete information associated with the lawsuit, such as the decision, complaint, and/or settlement documentation.

We conducted this performance audit from February 2015 to June 2016 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: Freedom of Information Act Exemptions

The Freedom of Information Act (FOIA) prescribes nine specific categories of information that are exempt from disclosure, which are described in table 7.

Table 7: Information Exempt from Disclosure under the Freedom of Information Act (FOIA)

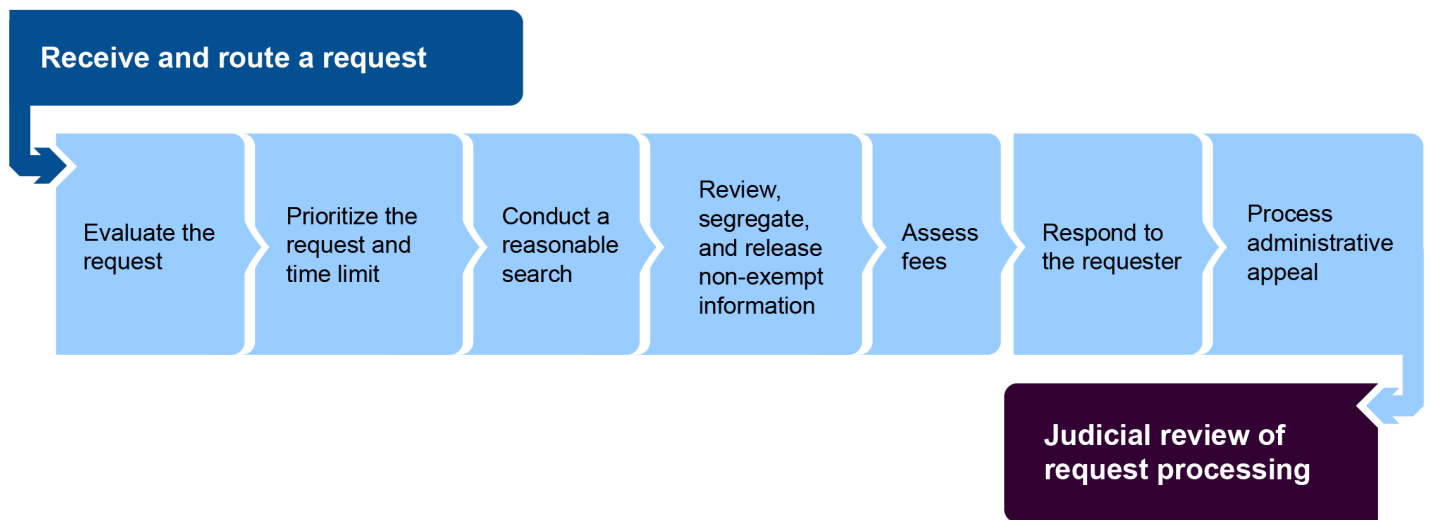
Exemption number	Matters that are exempt from FOIA
(1)	(A) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to the Executive Order.
(2)	Related solely to the internal personnel rules and practices of an agency.
(3)	Specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that matters be withheld from the public in such a manner as to leave no discretion on the issue or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.
(4)	Trade secrets and commercial or financial information obtained from a person and privileged or confidential.
(5)	Interagency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency.
(6)	Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
(7)	Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: <ul style="list-style-type: none"> (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (F) could reasonably be expected to endanger the life or physical safety of an individual.
(8)	Contained in or related to examination, operating, or condition of reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.
(9)	Geological and geophysical information and data, including maps, concerning wells.

Source: 5 U.S.C. § 552(b)(1) through (b)(9). | GAO-16-248

Appendix III: Department of Labor Stages for Processing a Freedom of Information Act (FOIA) Request

In August 2013, the Department of Labor's Office of the Information Services (OIS) issued guidance¹ that is intended to assist the department's staff in responding to FOIA requests. The guidance outlines the nine stages of processing a request received by the department, including the processing of administrative appeals and judicial reviews of lawsuits filed by requesters, as depicted in figure 3 below.

Figure 3: Department of Labor Stages for Processing a Freedom of Information Act Request



Source: GAO analysis of agency information. | GAO-16-248

The nine stages that components are to take are as described:

- **Receive and route a request.** A FOIA request can be submitted to the department by a member of the public via postal mail, e-mail, or fax. If OIS receives a request, its staff are to log the request into the Secretary's Information Management System for FOIA (SIMS-FOIA) and route the request to the appropriate DOL component office, or retain the request if it pertains to the Office of the Solicitor. When the appropriate component receives the request in SIMS-FOIA, the clock for processing the request (i.e., 20 working days) starts. If the request

¹Department of Labor, *FOIA Best Practices Processing Guide* (Aug. 9, 2013).

is misrouted, it is to be returned to OIS for reassignment to the appropriate component. Once assigned to the appropriate component, the FOIA processor receiving the request is to send an acknowledgement letter with a unique tracking number to the requester.

- **Evaluate the request.** The FOIA processor is to obtain from the requester a description of the records sought and determine if there is enough information to locate the responsive records. The processor is then to confirm in writing (or by e-mail) any narrowing in scope of the request or alternative time frames (i.e., beyond the 20 working days due to unusual circumstances) for processing the requests.
- **Prioritize requests and time limit.** When processing a request, components are to use one of three processing tracks (simple, complex, or expedited) and are to identify in SIMS-FOIA which track is being used to process the request. The decision is to be made based on the amount of work and/or the amount of time needed to process the request.
- **Conduct a reasonable search.** The FOIA processor is to conduct a search for responsive records. To do so, the processor can consult with subject matter experts to identify the type of responsive records that exist and the location of the records. Components are to maintain documentation concerning the search methodology, including the offices where the records were searched, the individual(s) that conducted the search, and what search terms were used.
- **Review, segregate, and release non-exempt information.** The FOIA processor is to review the responsive records, and determine whether a portion or all of any record should be withheld based on a statutory exemption. If a portion or all of any record is the responsibility of another agency or component, FOIA processor can consult with the other agency or component or send the responsive records to that other agency or component for processing.
- **Assess fees.** The component is to assess the fees that will be charged by the type of requester that is making the request. For

example, if the requester is a member of the news media, then he/she may request a fee waiver.² Further, the types of fees charged depend on time spent to search for responsive records, document the review of records, and the copies of the records.

- **Respond to the requester.** When responding to the requester, the FOIA processor is to make a determination to release a response in full, to apply an exemption and withhold information protected under an exemption and release certain parts of the response, or fully deny the request. A response must be in writing and signed by a FOIA disclosure officer. Response letters must include language regarding the identification of responsive records; the page count of records processed; the amount of information or pages withheld, if applicable; the identification of any exemptions asserted; any procedural denials that apply; and the requester's right to file an administrative appeal.
- **Process administrative appeal.** A requester has the right to administratively appeal any adverse determination a component makes concerning a request. The Office of the Solicitor, which serves as the designated appeals official, is to notify the requester in writing when the appeal is received, and review the component's actions taken in response to the FOIA request to determine whether corrective steps are necessary. The Office of the Solicitor is to then issue a final appeal determination and notify the requester of the right to seek judicial review.
- **Conduct judicial review of processing.** FOIA provides requesters with the right to challenge an agency's final decision in federal court. Components have the burden of proof and must demonstrate to the court all actions taken in response to a request, or that appeal determinations are appropriate and consistent with the statute and the department's FOIA regulations. Components are to provide the department's FOIA Counsel with the case file, including the

²According to FOIA, a member of the media would qualify to be under the second category of fees (educational institutions, noncommercial scientific institutions, and representatives of the news media). Under this fee category, requesters are only assessed applicable duplication fees. In addition, requesters can ask for a waiver of fees (and representatives of the news media often qualify for a waiver) when "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."

**Appendix III: Department of Labor Stages for
Processing a Freedom of Information Act
(FOIA) Request**

responsive record, any exemptions applied, and a response letter, as well as an appeal determination, if applicable. The FOIA case file must be preserved and processors must be prepared to justify their actions in the event of litigation.

Appendix IV: Timeliness of Department of Labor Components in Processing Freedom of Information Act Requests

Using our sample of 258 Freedom of Information Act requests, we reviewed the Department of Labor's timeliness in processing the requests. Specifically, for each of the department's 23 components, table 8 shows the number of requests in our sample of each type (simple, complex, or expedited); the number of days it took for those requests to be routed to the correct office; and the number of days it took for the components to respond to the requests.

Table 8: Timeliness of Department of Labor Processing of Selected Fiscal Year 2014 Freedom of Information Act Requests, by Component

Component	Total requests reviewed	Simple	Complex	Number of sample count requests that were routed to the correct office within 10 days ^a		Number of sample count requests that met the statutory requirement to respond within 20 days ^b	
				Simple	Complex	Simple	Complex
Adjudicatory Boards	10	10	n.a.	8	n.a.	10	n.a.
Office of Administrative Law Judges	10	4	6	3	6	3	5
Office of the Assistant Secretary for Policy	3	n.a.	3	n.a.	2	n.a.	0
Bureau of Labor Statistics	10	7	3	6	2	7	1
Office of the Chief Financial Officer	10	1	7	1	7	1	6
Employee Benefits Security Administration	10	2	8	2	6	1	5
Employment and Training Administration	10	7	3	7	3	7	2
Bureau of International Labor Affairs	8	2	6	2	5	1	1
Mine Safety and Health Administration	10	n.a.	10	n.a.	10	n.a.	8
Office of the Assistant Secretary for Administration and Management	10	1	9	0	8	1	4
Office of Congressional and Intergovernmental Affairs	10	n.a.	10	n.a.	7	n.a.	3
Office of Disability Employment Policy	5	n.a.	5	n.a.	2	n.a.	4
Office of Federal Contract Compliance Programs	10	3	7	3	6	3	5
Office of Inspector General	10	8	2	8	2	6	1
Office of Labor Management Standards	10	6	4	5	4	3	1

Appendix IV: Timeliness of Department of Labor Components in Processing Freedom of Information Act Requests

Office of Public Affairs	7	1	6	1	5	0	4
Office of the Secretary	10	n.a.	10	n.a.	10	n.a.	3
Occupational Safety and Health Administration	51	22	28	21	26	18	22
Office of Workers' Compensation Programs	10	2	8	2	7	2	4
Office of the Solicitor	10	n.a.	10	n.a.	6	n.a.	2
Veterans' Employment and Training Service	10	2	8	2	8	2	6
Women's Bureau	8	5	3	4	1	0	0
Wage and Hour Division	16	12	4	11	2	6	4
Sample Totals	258	95	160	86	135	71	91

Source: GAO analysis of Department of Labor data. | GAO-16-248

^aThis is required by law to occur within 10 working days. It is measured by the number of days between "date received in DOL" and the assignment or "date assigned to agency" date.

^bThis is required by law to occur within 20 working days. It is measured by the number of days between the "FOIA start" date and the "date of response."

Appendix V: Comments from the Department of Labor

U.S. Department of Labor

Solicitor of Labor
Washington, D.C. 20210



May 11, 2016

Valerie C. Melvin
Director,
Information Management and Technology Resources Issues
U.S. Government Accountability Office
441 G. Street, N.W.
Washington, D.C. 20548

Dear Ms. Melvin:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO) draft report entitled *Freedom of Information Act – Department of Labor Can Improve Management of its Program (GAO-16-248)*.

The Department of Labor (the Department) agrees that it can improve the management of its FOIA program. The Department is pleased to note GAO's acknowledgement of our efforts to effectively manage our FOIA program and the role that each of the Department's component offices has served to facilitate full and complete responses to the approximately 17,000 initial FOIA requests it processes each fiscal year. We understand that you asked the Department's staff to provide technical comments separately, and that has occurred.

The draft report contained five recommendations made to the Department, with which the Department agrees. Specifically, GAO recommended:

GAO Recommendation 1: Establish a time frame for finalizing and then issue an updated FOIA regulation.

Response: The Department concurs. As was discussed with GAO during its review, the Department has drafted a Notice of Proposed Rulemaking (NPRM) to update our FOIA regulations found at 29 CFR Part 70. The draft regulation is in departmental clearance, preparatory to being sent to the Federal Register for publication and a period of public comment. We expect the final regulation to be published by the end of 2016.

GAO Recommendation 2: Establish a time frame for implementing, and take action to implement section 508 requirements in the department's FOIA system and online portal.

Response: The Department concurs. GAO's recommendation involves two different information technology platforms/systems. First, the Department's "online FOIA portal," located at <http://www.dol.gov/foia/>, is used by FOIA requesters to obtain information regarding their FOIA requests. The Department's Office of Public Affairs (OPA) manages that online FOIA portal, as well as all of the pages on the "DOL.gov" webpage. As was discussed with GAO during its review, OPA has determined that the color of text and features used on this public FOIA portal may impact those who have impaired vision. The Department is taking

action to review and modify text, tags and formatting on this page to be compliant with the provisions of Section 508 of the Rehabilitation Act. We expect to have the necessary changes in place no later than September 2016.

The second part of the recommendation relates to the system design of the Department's internal FOIA tracking system, SIMS-FOIA, which is managed by Office of the Chief Information Officer (OCIO) within the Office of the Assistant Secretary for Administration and Management (OASAM). The system, designed in 2006, is used only by DOL agency employees with FOIA responsibilities. As part of the system design, mandatory text fields were created by the IT designer in a form or format that may limit accessibility to vision impaired users. As was communicated to GAO during the review, OASAM previously determined that it can fulfill the requirements of Section 508 by providing any DOL FOIA staff that require access to the system and have vision or other accommodation needs with individualized accommodations suited to their needs, such as large screen magnifiers, verbal description tools, and related methodologies. No requests for accommodations to access SIMS-FOIA have been received to date, but should such a request be received in the future, OASAM will work with the impacted staff and FOIA component to provide access to equipment or other reasonable accommodation. Therefore, this action has been completed for some time.

We will continue to ensure that Section 508 compliance is included as a necessary element in planning for any future SIMS-FOIA replacement or successor system.

GAO Recommendation 3: Establish a time frame for implementing, and take actions to fully implement, recommended best practice capabilities for enhanced processing of requests in the department's FOIA system and online portal.

Response: The Department concurs that FOIA processing may be improved by implementing recommended best practices like those articulated in the GAO Report. Although not all of those best practices are currently available using our current FOIA tracking system – SIMS-FOIA – the system does allow the Department to fully comply with its reporting obligations as outlined in the FOIA statute as well as those mandated by the Department of Justice (DOJ) in its FOIA oversight role across government. The Department continues to monitor proposed FOIA legislation and guidance from DOJ so that the agency can be positioned to assess the feasibility and business need for investment in such technology changes. We will ensure that these recommendations are considered as a part of our planning for any future SIMS-FOIA replacement or successor system.

GAO Recommendation 4: Require components to document in SIMS-FOIA the rationales for delays in responding to FOIA requests, and to notify requesters of the delayed responses when processing requests.

Response: The Department concurs that documenting these rationales in SIMS-FOIA can be a "best practice" and has already begun to implement this recommendation. Department FOIA component staff have been directed to starting uploading these documents into SIMS-FOIA. The Office of Information Services (OIS) will issue implementing guidance specifying procedures for the Department's FOIA staff to upload into SIMS-FOIA documentation regarding processing

delays and notifications to requesters, even if that information is already contained in the official records of FOIA case files. The guidance will also provide guidance to the Department's FOIA components on updating their existing standard operating procedures to reinforce these procedures. OIS will provide follow-up training on this guidance after it is finalized and disseminated. The Department expects to have the guidance and follow-up training completed by the end of September 2016.

GAO Recommendation 5: Establish a time frame for consulting with the Department of Justice's Office of Information Policy on including language in DOL's response letters to administrative appeals notifying requesters of the National Archives and Records Administration's Office of Government Information Services' mediation services as an alternative to litigation, and then ensure that the department includes the language in the letters.

Response: The Department concurs. The Department consulted with DOJ's Office of Information Policy on March 7, 2016. As of March 31, 2016, the Department now includes language in our final appeals decisions informing requesters of OGIS's mediation services.

Sincerely,



M. Patricia Smith
Chief FOIA Officer

Appendix VI: Comments from the National Archives and Records Administration



ARCHIVIST *of the*
UNITED STATES

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Via email

5 May 2016

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

Dear Ms. Melvin:

Thank you for the opportunity to review and comment on the draft report GAO 16-248, *Freedom of Information Act: Department of Labor Can Improve Management of its Program*. We recognize the importance of a robust Freedom of Information (FOIA) program throughout the Government. We appreciate the thorough review of the FOIA program at the Department of Labor (DOL) by your staff. We are especially pleased that GAO recognized the important work of the Office of Government Information Services (OGIS) and recommended that DOL include in its final appeal letters information regarding OGIS's mediation services as a non-exclusive alternative to litigation. OGIS performs an important service to the public and Government alike by working within the FOIA community to prevent litigation.

If you have any questions regarding this memo, please contact Kimm Richards, NARA's Audit Liaison, at 301-837-1668 or via email at kimm.richards@nara.gov.

Sincerely,



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Archivist of the United States

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Appendix VII: GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

In addition to the contact named above, key contributors to this report were Anjalique Lawrence (Assistant Director), Freda Paintsil (Analyst in Charge), Christopher Businsky, Quintin Dorsey, Rebecca Eyer, Andrea Harvey, Ashfaq Huda, Kendrick Johnson, Lee McCracken, Dae Park, David Plocher, Umesh Thakkar, Walter Vance, and Robert Williams, Jr.

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