

# Assessing Freedom of Information Act Compliance through the National Archives and Records Administration’s 2023 Records Management Self-Assessment

<b>What NARA Collected</b>	
<p>Each year, the Chief Records Officer (CRO) for the U.S. Government at the National Archives and Records Administration (NARA) assesses whether federal agencies are complying with statutory and regulatory records management requirements. The Records Management Self-Assessment (RMSA) data collection includes several questions about the administration of the Freedom of Information Act (FOIA). The data collection ran from January 8, 2024 – March 8, 2024.</p>	
<b>Why We Included FOIA Questions</b>	
<p>A strong records management program—which allows agencies to find records responsive to FOIA requests—is essential to a successful FOIA program. Data collected in the RMSA helps OGIS fulfill its statutory mandate to review agency compliance with FOIA and complements the observations OGIS makes as the FOIA Ombudsman, working to improve the FOIA process for all.</p>	
<b>Key Results</b>	
<p>COVID-19 pandemic FOIA backlogs persist at some agencies.</p>	<p>The 2023 data reflect a 5-percentage point increase in agency FOIA programs reporting minimal or no pandemic-related impact to the FOIA backlog (84 percent) over 2022 (79 percent). The number of agencies reporting a continuing moderate or significant negative impact to the backlog caused by the pandemic dropped 2-percentage points from 2022 to 16 percent.</p>
<p>Proactive release continues to challenge agencies.</p>	<p>A majority of agencies (59 percent) post records only on an ad-hoc basis (“as needed”) when no FOIA request has been filed.</p>

Some FOIA websites are deficient.	Comparing the 2023 data against data from the 2019 RMSA, it appears that federal agencies continue to struggle with providing FOIA information, context, and guidance to requesters on their FOIA websites.
FOIA obligations in contracts are not widespread.	Almost half (48 percent) of respondents reported including language covering FOIA obligations in contracts for services and products.

## Background

Since the 2016 Records Management Self-Assessment (RMSA), OGIS has collaborated with the Chief Records Officer (CRO) for the U.S. Government at the National Archives and Records Administration (NARA) to collect government-wide information related to FOIA compliance. The CRO has issued the RMSA since 2009 to determine whether agencies are complying with statutory and regulatory records management requirements. It is a natural fit for OGIS to include FOIA questions in the RMSA data collection because a strong records management program—which allows agencies to find records responsive to a FOIA request—is essential to a successful FOIA program.

In working with the CRO, OGIS has leveraged investments by NARA in survey technology and the CRO’s expertise in collecting self-reported compliance information. The RMSA’s high response rate in the last few years has helped OGIS better understand FOIA administration across the government and complements the observations we make through our other activities, including providing dispute resolution services to requesters and agencies, assessing FOIA compliance, and leading the federal FOIA Advisory Committee and the Chief FOIA Officers Council. Since Calendar Year (CY) 2018, the RMSA response rates have been at or above 95 percent, falling below—to 92 percent—only in CY 2020, when the self-assessment coincided with the start of COVID-19 pandemic. This year’s response rate was ---98 percent.

The RMSA included four questions regarding FOIA administration. Two questions were repeated from the 2022 RMSA: one that pertained to the COVID-19 pandemic and its continuing effects on FOIA processing in 2023 and another that sought to quantify the frequency with which agencies proactively disclose records. An additional question, repeated from the 2019 RMSA, sought to survey agencies on the resources they make available on their

FOIA websites for requesting records. The remaining question surveyed agencies on whether they explicitly spell out FOIA obligations when entering into contracts for goods and services.

The 2023 RMSA received a total of 278 respondents from all Cabinet-level departments, departmental components and independent agencies. Not all respondents may have answered all four FOIA questions because some agencies may have skipped certain questions while respondents in the judicial branch are subject to the Federal Records Act but not to the FOIA. The 12 judicial branch respondents were not included in the statistics for this report.<sup>1</sup>

A complete list of the four 2023 RMSA questions— each of which is discussed in detail below— is available in the Methodology section further below.

## Discussion of results

### COVID-19 backlog persists at some agencies

#### Q56. How much impact does the COVID-19 pandemic still have on your agency's FOIA processing?

A majority of agencies have rebounded from backlogs sparked by the March 2020 order of maximum telework flexibilities by the Office of Personnel Management (OPM) in response to the COVID-19 pandemic.<sup>2</sup> The move initially affected FOIA processing governmentwide, particularly at agencies that were not telework-ready, agencies that work with classified records, and agencies with largely paper records. Four years later, when agencies were responding to the questions, 16 percent indicated that their backlogs were still moderately or significantly affected by the pandemic.

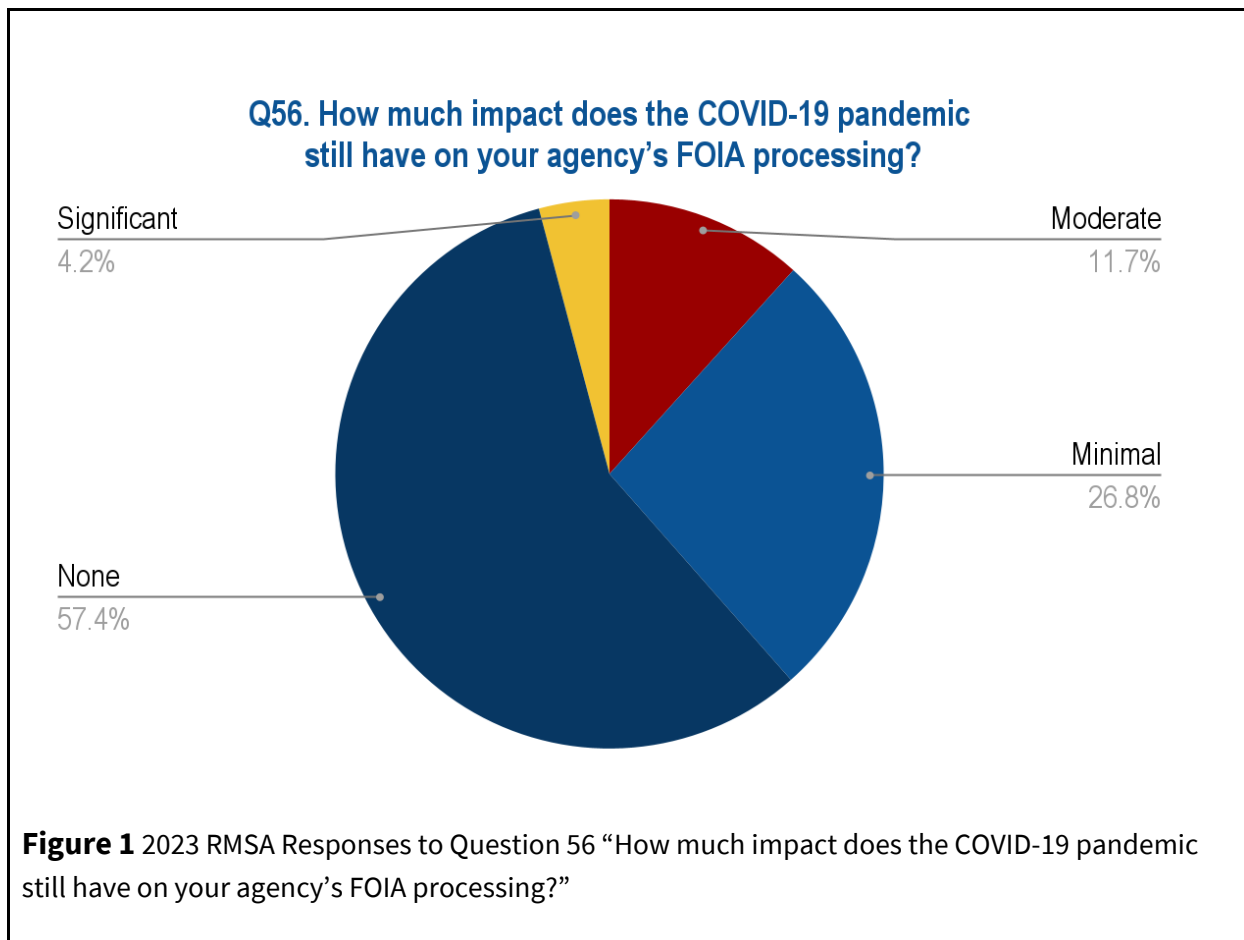
The results from the 2023 RMSA show that a majority of agencies (84 percent) have rebounded from the pandemic—reporting minimal or no pandemic-related negative impact to the backlog. However, 42 agencies (16 percent) reported a continuing moderate or significant negative impact to the backlog caused by the pandemic.

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<sup>1</sup> The CRO analyzed and reported the RMSA results separately. OGIS did not include agencies to which FOIA does not apply.

<sup>2</sup> OPM ended maximum telework flexibility effective May 15, 2023.

Of the 266 respondents subject to FOIA, 57 percent answered, “None - completely meets or exceeds pre-pandemic levels of backlogs,” and 27 percent answered, “Minimal negative impact to backlog continues.” Twelve percent answered, “Moderate negative impact to backlog continues” and 4 percent answered that a “significant negative impact to backlog continues.”



As shown in Table 1 below, the comments of the 2023 RMSA respondents who volunteered explanations centered on two themes: the pandemic exacerbating resource challenges, and an influx of FOIA requests seeking records about the government's pandemic response.

**Table 1: Selected Data from 2023 RMSA voluntary explanations Responses to Question 56 “How much impact does the COVID-19 pandemic still have on your agency’s FOIA processing?”**

Theme	Agency Comments
<p><b>The pandemic exacerbated resource challenges</b></p>	<p>“Several senior information management staff members did not return [when full-time telework ended for the agency]; this severely impacted FOIA request support.”</p> <p>“[The agency's] FOIA backlog significantly increased during COVID.”</p> <p>“[The agency's FOIA backlog] has grown to an all-time high of over 6,200 cases while funded staffing levels have remained static. [The FOIA] program cannot keep pace with this workload demand, resulting in longer processing times and backlog growth.”</p>
<p><b>New requests about pandemic activities</b></p>	<p>“[The agency] continues to receive FOIA requests concerning Covid-19 [...] Most of the responsive records for a single request are voluminous and require coordination with multiple business submitters and [other agencies].”</p> <p>“We continue to process and receive requests about COVID-19, particularly from politically motivated groups, and are facing a large number of litigations involving COVID-19 records. Two of these cases are unprecedented in scope and each require over 50,000 pages [to be produced] per month.”</p>

**Observations**

The impact of the COVID-19 pandemic on FOIA backlogs appears to be persisting longer than anticipated for some agencies. OGIS has observed that several agencies saw an increase in FOIA requests for records that may shed light on the federal government’s response to the pandemic. Of the 42 responding agencies that reported a significant or moderate pandemic-related backlog, nearly a quarter are agencies focused on public health. Approximately half of responding agencies work with sensitive or classified records and had minimal or no capacity to process them remotely at the onset of the pandemic. The 2023 data reflect modest improvement over the data from the 2022 RMSA, when 53 percent of 261 respondents answered “None;” 26 percent reported a “Minimal negative impact;” 13 percent answered, “Moderate negative impact;” and 5 percent reported that a “Significant negative impact to backlog continues.” The additional workload of pandemic-related requests may explain why some agencies continue to experience a significant or moderate impact to their FOIA backlog, while other agencies still face backlogs that grew when they faced constraints in the number of FOIA staff who could be onsite to process classified or sensitive records. These agencies continue to face challenges and are making slower than expected progress in returning their backlogs to pre-pandemic levels.

## Proactive release continues to challenge agencies

Q57. How often are you proactively (*i.e.*, before receiving any FOIA requests for the information) making records public by posting information appropriate for the public?

The second FOIA question in the 2023 RMSA is repeated from the [2022 RMSA](#) and asked respondents to describe how often they proactively (*i.e.*, before receiving any FOIA requests for the information) make records public by posting information appropriate for the public. There were 278 responses to this question for 2023. The most common response was “as needed” (59 percent); 9 percent of respondents reported making proactive disclosures annually; 8 percent reported making proactive disclosures monthly; and 8 percent reported making proactive disclosures quarterly. The remaining options were: “other, please explain” (15 percent) and “do not know” (0.4 percent).

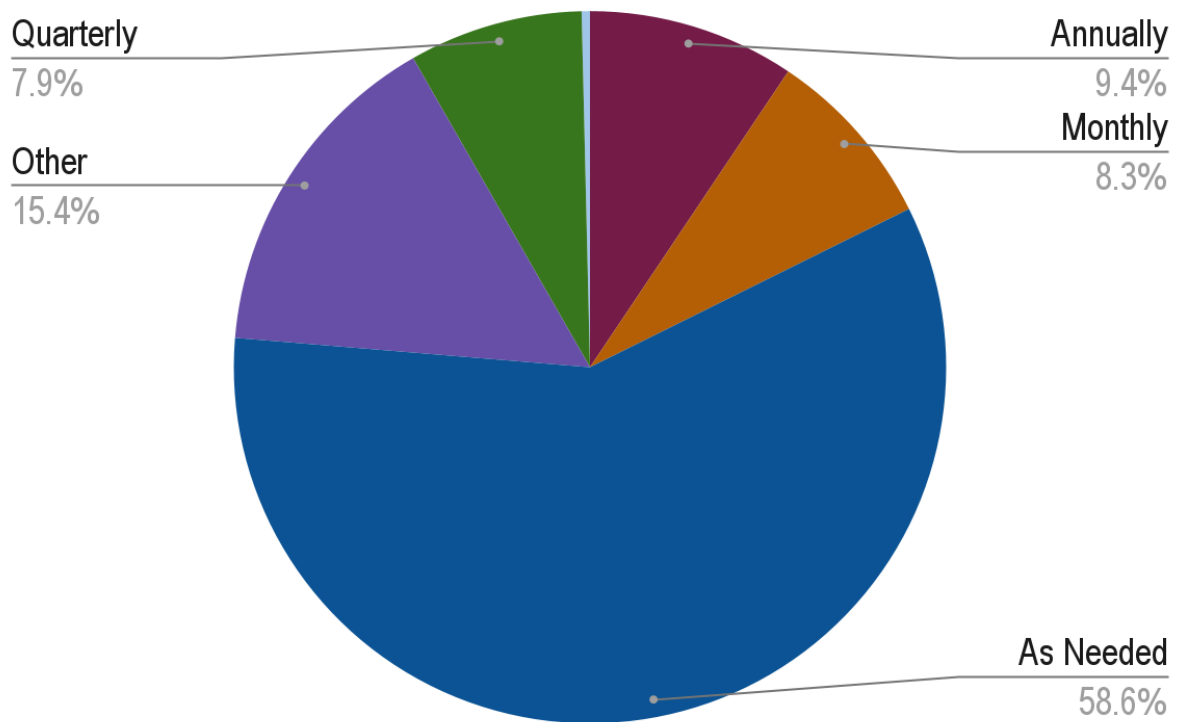
As shown in Table 2 below, the “Other, please be specific” comments in the most recent RMSA illustrate the wide variety of agency assumptions regarding proactive disclosure. OGIS has observed that agencies often have limited resources to keep up with FOIA requests, limiting capacity to identify potential records for proactive release. Some agencies indicated in the RMSA that they would follow the “rule of three”—the requirement under FOIA that an agency publicly post a record that has been requested three or more times—if it were applicable.

**Table 2: Q57. How often are you proactively making records public by posting information appropriate for the public?**

<b>Agencies routinely post on varying schedules</b>	“[Agency] investigation records are published daily to the [...] public website prior to receiving FOIA requests.”
	“[The agency] annually updates FOIA reading room pages to provide ready access to high demand records and makes other records available upon request (as appropriate).”
	“[The agency] identif[ies] records for posting to [the] reading room when [...] releasing them to the requester.”
	“[The agency] makes the annual [...] filings required from plans available and searchable online by the general public [...] We also have the Public Disclosure room to assist the public with getting copies of specific plan[s] via telephone, mail, and online requests.”
	“[The agency] routinely posts publicly applicable reports to a publicly accessible website.”
	“[The agency] routinely releases/posts non-sensitive records to the public, without requiring a FOIA request.”
	“The [agency], on a bi-weekly schedule, posts on its website all of its letters that make recommendations to other agencies. It also posts materials related to its grants program and its policy statements on its website. These are the records of greatest interest to the public. Because of its proactive publication of these materials, the [agency] has never received three requests for the same records.”
	“The [agency's] Web site is quite active, and we are constantly posting information of interest to the public and [business] communities. We also routinely add information [...] to our FOIA Library.”
	“The agency is currently transitioning to a new website and is focused on ensuring that it proactively makes records public by posting information appropriate for the public.”
	“The agency proactively posts information on its public website at least weekly, and often on a daily basis.”
“The majority of our FOIA requests are for [a specific kind of] data. [The agency] strives to make all unprotected data and analysis available to the public through our website.”	
“We are making an effort to proactively post groups of records that we feel the public may have interest in, for example, 'all litigation releases made in Q1.'”	
<b>Lack of capacity to identify potential</b>	“Due to [the agency's] FOIA process [requiring departmental] help to process FOIA requests due to [staffing shortages, the agency] does not have any process/staging area for making records public.”

<b>records for proactive release</b>	
<b>Prepared to follow 'rule of three' (if it were applicable)</b>	"[The agency does not] have multiple FOIA requests for the same information."
	"[The agency] has not had multiple FOIA requests from multiple requesters of similar nature in order to be posted on the [agency's] FOIA website."
	"[The agency] has not received requests which are similar in nature or which have been requested three or more times."
	<i>[The agency] has not received three requests for the same information in several years.</i>

**Q57. How often are you proactively making records public by posting information appropriate for the public?**

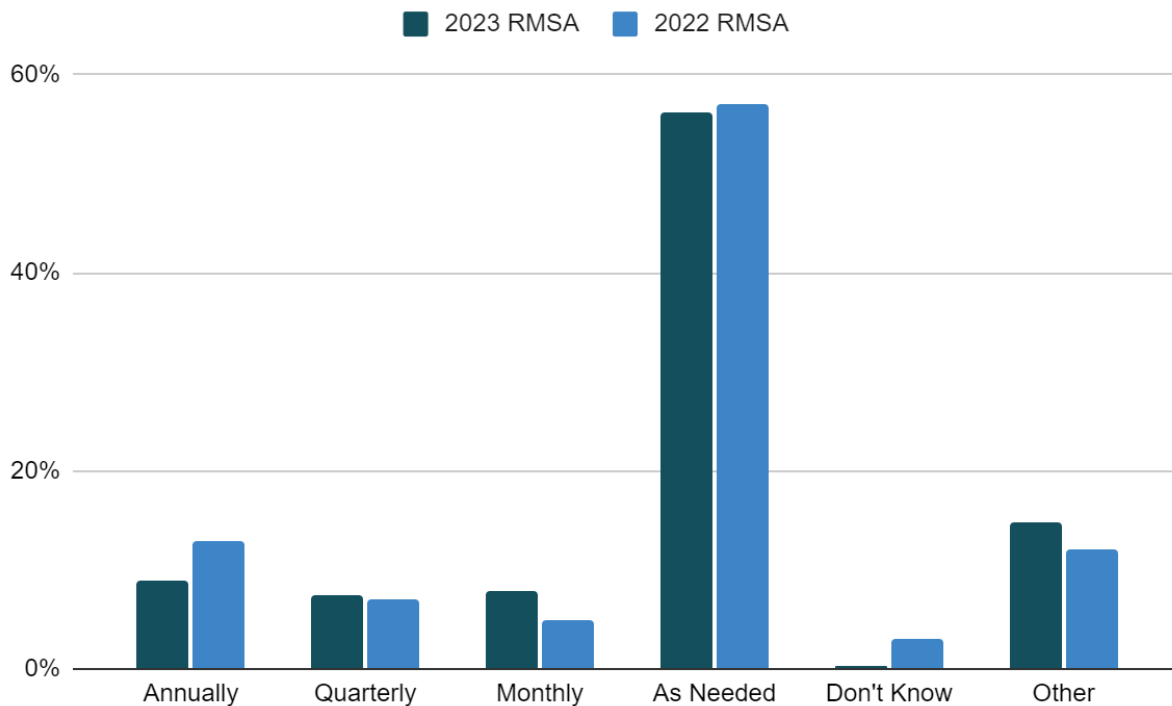


**Figure 2** 2023 RMSA Responses to Question 57 “How often are you proactively (i.e., before receiving any FOIA requests for the information) making records public by posting information appropriate for the public?”



## Observations

Figure 3 below shows the minimal change between the 2022 responses and the 2023 responses. The lack of change in proactive release cadence comports with what OGIS has observed: a number of agencies struggle to respond to a high volume of FOIA requests, leaving little time or resources for robust and routine proactive disclosures. As OGIS reported in February 2020, federal agencies generally comply with FOIA’s mandate to create procedures for posting documents on FOIA reading rooms, with more than 83 percent of respondents saying that their agencies have such procedures. More than half of the time, however, the responsibility for preparing the documents for posting rested with the FOIA staff. Agencies are responsible for ensuring that records are Section 508-compliant and are often burdened by the accessibility requirement as they struggle to balance competing priorities of processing requests and posting documents online. As part of an OGIS assessment in December 2020, [Methods Agencies Use to Prepare Documents for Posting on Agency Freedom of Information Act \(FOIA\) Websites](#), agencies frequently cited challenges to posting records online as a barrier to proactive release.



**Figure 3** 2023 and 2022 RMSA Responses to Question 57 “How often are you proactively (i.e., before receiving any FOIA requests for the information) making records public by posting information appropriate for the public?”

## Some FOIA websites are deficient

Q58. Which of the following does your agency/component have available on its FOIA website for requesting records?

Question 58 in the 2023 RMSA was repeated from the [2019 RMSA](#). Its inclusion in that RMSA laid the foundation for an OGIS [issue assessment](#)—subsequently published on November 28, 2022—about the information agencies publish on their websites, including information to facilitate FOIA requesting. The 2022 OGIS assessment fulfilled FOIA Advisory Committee [Recommendation No. 2020-01](#) to help facilitate the FOIA filing process and inform OIP guidance on how agencies can improve online descriptions of the FOIA process.

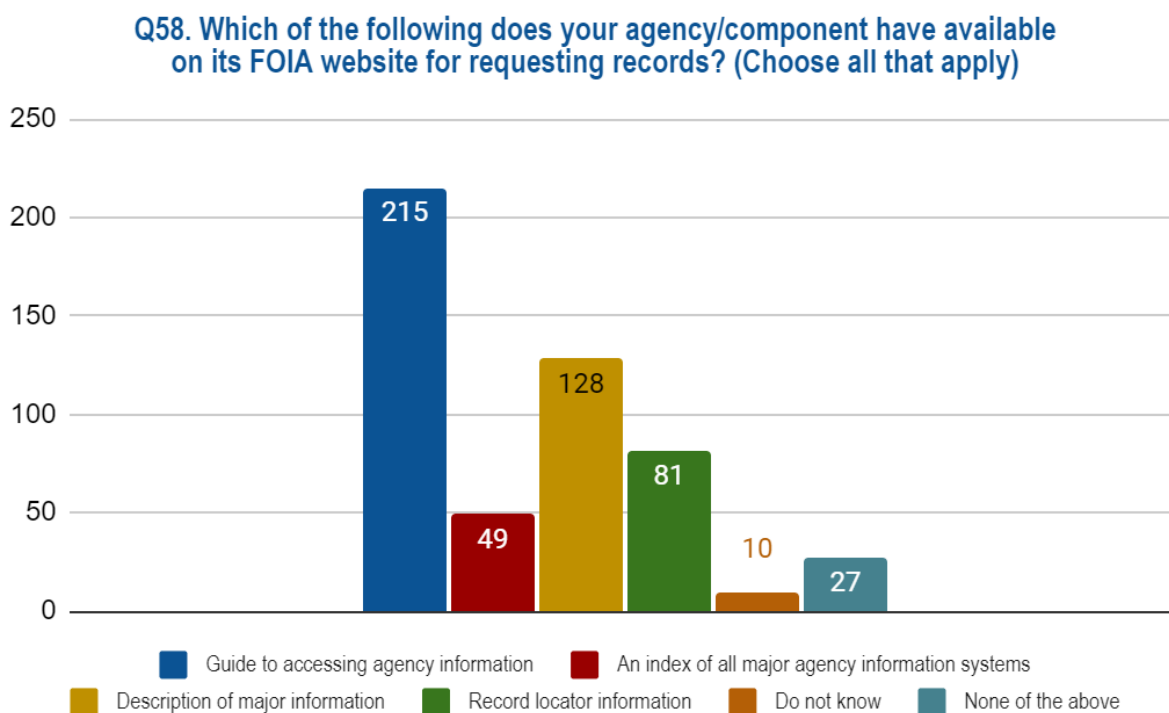
The answer options for the RMSA question in 2019 and again in 2023 identified foundational types of data that requesters would need in order to make informed FOIA requests.

The 2023 RMSA asked respondents to report on the resources available on their FOIA websites for requesting records by choosing all of the statements that applied, so the percentages do not add up to 100. The responses include:

- 81 percent reported that their websites include a guide to accessing agency information;
- 48 percent reported including a description of major information;
- 30 percent said they included record locator information; and
- 18 percent reported including an index of all major agency information systems.

Additionally, 10 percent responded “None of the above;” and 4 percent answered, “Do not know.”

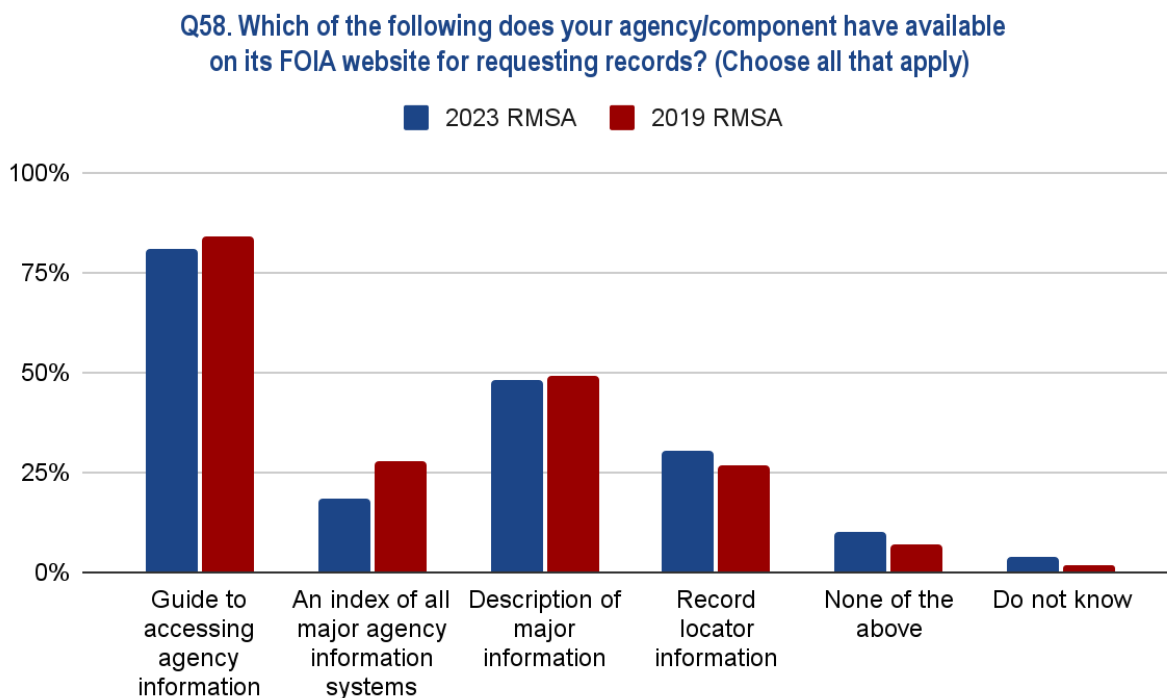
**Figure 4** 2023 RMSA Responses to Question 58: “Which of the following does your agency/component have available on its FOIA website for requesting records?”



## Observations

This question received 8 percent more responses on the 2023 RMSA than on the 2019 RMSA (266 versus 247). To some degree, the larger response may explain the slight reduction in percentage of respondents who chose each option on the 2023 RMSA. Specifically, there was a 3-percentage point drop in responses selecting “Guide to accessing agency information;” a 10-percentage point drop in responses selecting “an index of all major agency information systems;” and a 1-percentage point drop in responses selecting “Description of major information.” Three other categories showed slight increases: there was a 3-percentage point rise in respondents who chose “Record locator information;” a 2-percentage point rise in those who did not know; and a 3-percentage point rise in those who selected “None of the above.”

Independent of the specific response rate, the small scale of the changes indicates that agencies appear to have not prioritized improvements to the types of information they provide on their FOIA websites.<sup>3</sup>



**Figure 5** 2023 and 2022 RMSA Responses to Question 58: “Which of the following does your agency/component have available on its FOIA website for requesting records?”

## FOIA obligations in contracts not widespread

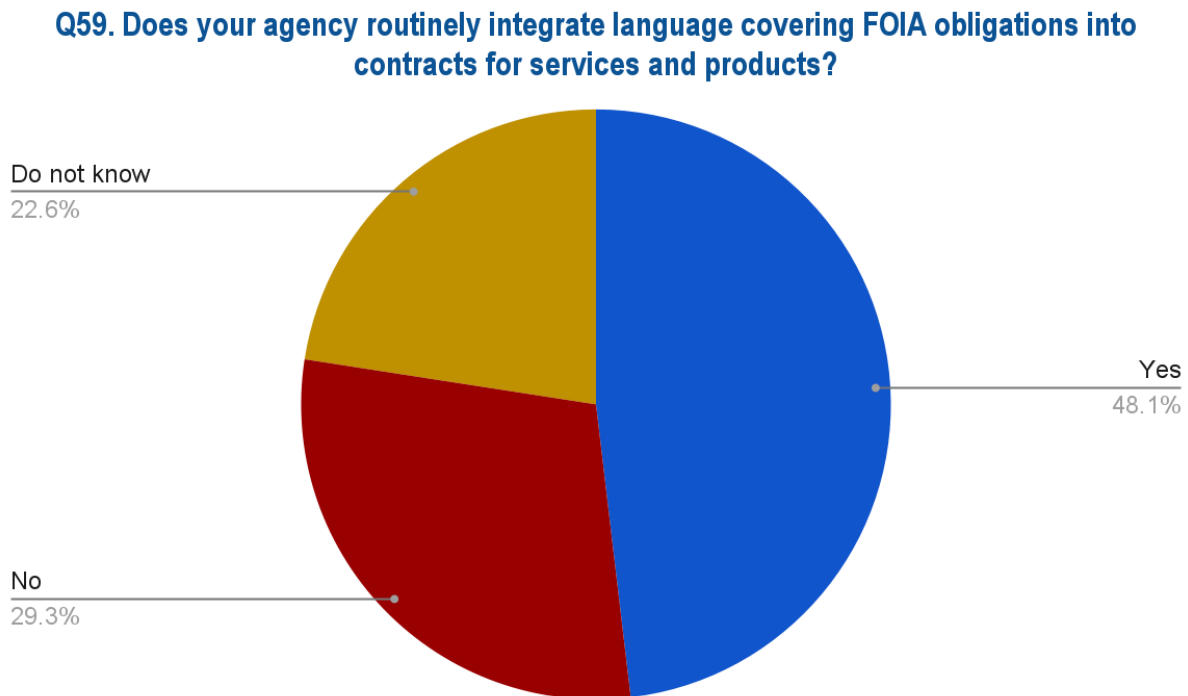
Q59. Does your agency routinely integrate language covering FOIA obligations into contracts for services and products?

The question asks whether agencies include language covering FOIA obligations when contracting for services and products and gauges the level to which agencies explicitly mention in contracts that FOIA will generally apply to records that contractors create on

<sup>3</sup> In [OGIS Issue Assessment: Agency FOIA Websites](#), published in November 2022, OGIS found that almost all agency FOIA websites have deficiencies in the information they include; there are some data points that almost all agencies include; and agencies generally include ample information on their websites, but finding it can often be difficult.

behalf of the federal government. Question 59 received 266 responses from agencies subject to FOIA. Of the respondents, 48 percent answered yes, and 29 percent answered no. Twenty-three percent answered that they did not know.

**Figure 6** 2023 RMSA Responses to Question 59: “Does your agency routinely integrate language covering FOIA obligations into contracts for services and products?”



### Observations

The inclusion or omission of language covering FOIA obligations into contracts for services and products does not affect the statutory obligation for record-keeping. Inclusion of such language serves to set expectations up-front, so contracting companies and contract staff understand how the records they create are subject to FOIA. This clarification may yield better responses to FOIA requests, ensuring contractors are aware of the legal responsibilities with regard to record-keeping and FOIA. The inclusion of Q59 in the 2023 RMSA shows that 48 percent of respondents were aware that their agencies included such language in their contracts.

Two terms of the FOIA Advisory Committee have recommended action that relates to FOIA and contractual language:

- The [2016-2018](#) term of the FOIA Advisory Committee recommended ([2018-03](#)) that “The Archivist of the United States will suggest a modification to the Federal Acquisition Regulation (FAR) to require all agencies, when acquiring electronic records management software, electronic mail software, and other records related information technology, to consider features that will help facilitate the agencies’ responsibilities under FOIA to provide access to federal agency records.” OGIS drafted a business case in FY 2019 that would modify the FAR, which governs how federal agencies acquire goods and services through purchase or lease, to require access to federal agency records as a consideration in the procurement process. NARA submitted the business case to the Office of Management and Budget (OMB) in early FY 2020 for consideration by the Federal Acquisition Regulatory Council.
- The [2018-2020](#) term of the FOIA Advisory Committee recommended ([2020-09](#)) that NARA “incorporate and further develop the idea of public access to federal records, including through FOIA, as part of its Federal Electronic Records Modernization Initiative (FERMI).” In response to this recommendation, NARA updated its [Universal Electronic Records Management \(ERM\) Requirements](#) in April 2020 to include FOIA requirements. The ERM now requires agencies to manage records in ways that support proactive release under FOIA. The ERM further states that records management should support sufficiency of FOIA searches. The General Services Administration's Federal Acquisition Service, which procures goods and services for the government, now uses the updated ERM.

## Conclusion

OGIS is grateful for its continued collaboration with the CRO in its annual RMSA. This participation helps us fulfill our statutory mission to “identify procedures and methods for improving compliance” under FOIA.

For the 2023 RMSA, we note that the percentage of respondent agency FOIA programs reported having minimal or no pandemic-related effect to the FOIA backlog (84 percent) is five percentage points higher than the previous year RMSA. This improvement leaves 16 percent reporting a continuing moderate or significant negative impact to the backlog caused by the pandemic. We are hopeful that the pandemic-related effects on FOIA backlogs will

continue to shrink, particularly after the federal government ended the COVID-19 public health emergency in May 2023.

The responses to the RMSA FOIA questions demonstrate continued room for improvement in proactive disclosures under FOIA. It is a challenge for many agencies and for which there is no easy answer.

We are pleased that 48 percent of respondents answered that their agency routinely integrates language covering FOIA obligations into contracts for services and products. Setting expectations up-front with contractors aides FOIA offices when they interact with contractors for federal records and improves FOIA administration throughout the federal government.

The 2023 RMSA has yielded data which informs the efforts of OGIS, the Chief FOIA Officers Council, and the FOIA Advisory Committee in working toward a FOIA process that works for all.

## Methodology

The CRO's office opened the 2023 RMSA on January 8, 2024 with a response deadline of March 8, 2024. The CRO's office conducts the RMSA via an online survey tool that creates a unique link used to submit responses in accordance with NARA's responsibility to report on the state of federal records management. Each year, federal agencies are required to conduct an RMSA and submit their findings to NARA. Ninety-eight percent of agencies that received the 2023 RMSA link completed the assessment. The goal of the self-assessments is to determine whether federal agencies are in compliance with statutory and regulatory records management requirements. A total of 278 agencies responded to the RMSA, but not all respondents answered the FOIA questions. The respondents included records officers at all Cabinet-level departments, departmental components, and independent agencies. Twelve non-executive branch agencies that are not subject to FOIA took part in the assessment. CRO instructed agency Records Managers to consult with their agency FOIA Officers to answer the FOIA-related questions. (Percentages are rounded up and, for some questions, may not equal 100 percent.)

The full 2023 RMSA report is one of three reports required by the CRO, the results of which are included in the Federal Agency Records Management Annual Report to Congress, published on NARA's website on the CRO's RMSA web page. Questions 56 -59 pertained to FOIA.

## List of Statistical Results from 2023 RMSA FOIA questions

<b>Q56. How much impact does the COVID-19 pandemic still have on your agency's FOIA processing? - Selected Choice</b>			
Answer Option	Count per answer option	Percentage subject to FOIA	Percentage of total responses
None - completely meets or exceeds pre-pandemic levels of backlogs	152	57%	55%
Minimal negative impact to backlog continues	72	27%	26%
Moderate negative impact to backlog continues	31	12%	11%
Significant negative impact to backlog continues, please explain:	11	4%	4%
Not applicable, my agency is exempt from FOIA	12	—	4%
<b>Q57. How often are you proactively (i.e., before receiving any FOIA requests for the information) making records public by posting information appropriate for the public?</b>			
Answer Option	Count per answer option	Percentage subject to FOIA	Percentage of total responses
Annually	25	9%	9%
Quarterly	21	8%	8%
Monthly	22	8%	8%
As Needed	156	59%	56%
Other	41	15%	15%
Don't Know	1	0.4%	0.4%
NA	12	—	4%
<b>Q58. Which of the following does your agency/component have available on its FOIA website for requesting records? (Choose all that apply)*</b>			
<i>*because this answer invited respondents to 'choose all that apply,' the percentages will add up to more than 100%.</i>			
Answer Option	Count per answer option	Percentage subject to FOIA	Percentage of all respondents



Guide to accessing agency information	215	81%	77%
An index of all major agency information systems	49	18%	18%
Description of major information	128	48%	46%
Record locator information	81	30%	29%
None of the above	27	10%	10%
Do not know	10	4%	4%
Not applicable, my agency is exempt from FOIA	12	—	4%
<b>Q59. Does your agency routinely integrate language covering FOIA obligations into contracts for services and products?</b>			
Answer Option	Count per answer option	Percentage subject to FOIA	Percentage of total responses
Yes	128	48%	46%
No	78	29%	28%
Do not know	60	23%	22%
Not applicable, my agency is exempt from FOIA	12	—	4%