

2019 National Sunshine Week

Taking Stock: Access to Information and Open Government Data

March 13, 2019

Conference Room 1

2019 National Sunshine Week

Wednesday, March 13, 2019 | 9:00 a.m. - 12:00 p.m.
U.S. Census Bureau, Conference Rooms 1 & 2



9:00-9:05 a.m. Welcome

Jennifer Goode, Program Manager, Open Government, Policy Coordination Office, U.S. Census Bureau

9:05-9:15 a.m. Opening Remarks

Steven Dillingham, Director, U.S. Census Bureau

Catrina Purvis, Chief Privacy Officer & Director, Office of Privacy and Open Government, Department of Commerce

9:15-9:20 a.m. Moderator

Robin J. Bachman, 2020 Census National Partnership Program, U.S. Census Bureau

9:30 a.m. - 12:00 p.m. Guest Speakers

Sean O'Neill, Chief of the Office of Information Policy, Appeals Staff, U.S. Department of Justice

Kirsten Mitchell, Compliance Team Lead, National Archives and Records Administration, Office of Government Information Services

Brian Harris-Kojetin, Director, Committee on National Statistics, The National Academies of Sciences, Engineering and Medicine

Rebecca Williams, Digital Services Expert, Office of the Federal Chief Information Officer, Office of Management and Budget

Speeches last approximately 15 minutes each.
Q&A between speakers.

Taking Stock: Access to Information and Open Government Data

The U.S. Census Bureau's Policy Coordination Office, Open Government Branch, welcomes you to this opportunity to learn more about open government and engage in conversation about access to information and open data.

Register at:
<https://www.eventbrite.com/e/us-census-bureau-sunshine-week-event-tickets-55766196194>



U.S. Department of Commerce
Economics and Statistics Administration
U.S. CENSUS BUREAU
[census.gov](https://www.census.gov)

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Taking Stock: The FOIA and Open Government

Sean O'Neill

Chief, Administrative Appeals Staff

Office of Information Policy, Department of Justice

Census Bureau Sunshine Week Event – March 13, 2019



“The advancement and diffusion of knowledge is the only guardian of true liberty”

-James Madison



The Freedom of Information Act (FOIA) is often described as a means for the public to know “**what their Government is up to.**”



The interplay between government secrecy and transparency extends back to the founding of the United States



Constitutional Convention- 1787



On **July 4, 1966** President Lyndon Johnson signed the FOIA into law.

Remarkably, this did not occur until approximately 179 years after the Constitutional Convention, but government transparency has come a long way in the fifty-three years since the FOIA became law.



Freedom of Information Act

- Provided for the proactive disclosure of key information.
- Afforded any member of the public with a statutory right to request access to government records.
- Delineated discrete categories of information that are exempt from mandatory release.

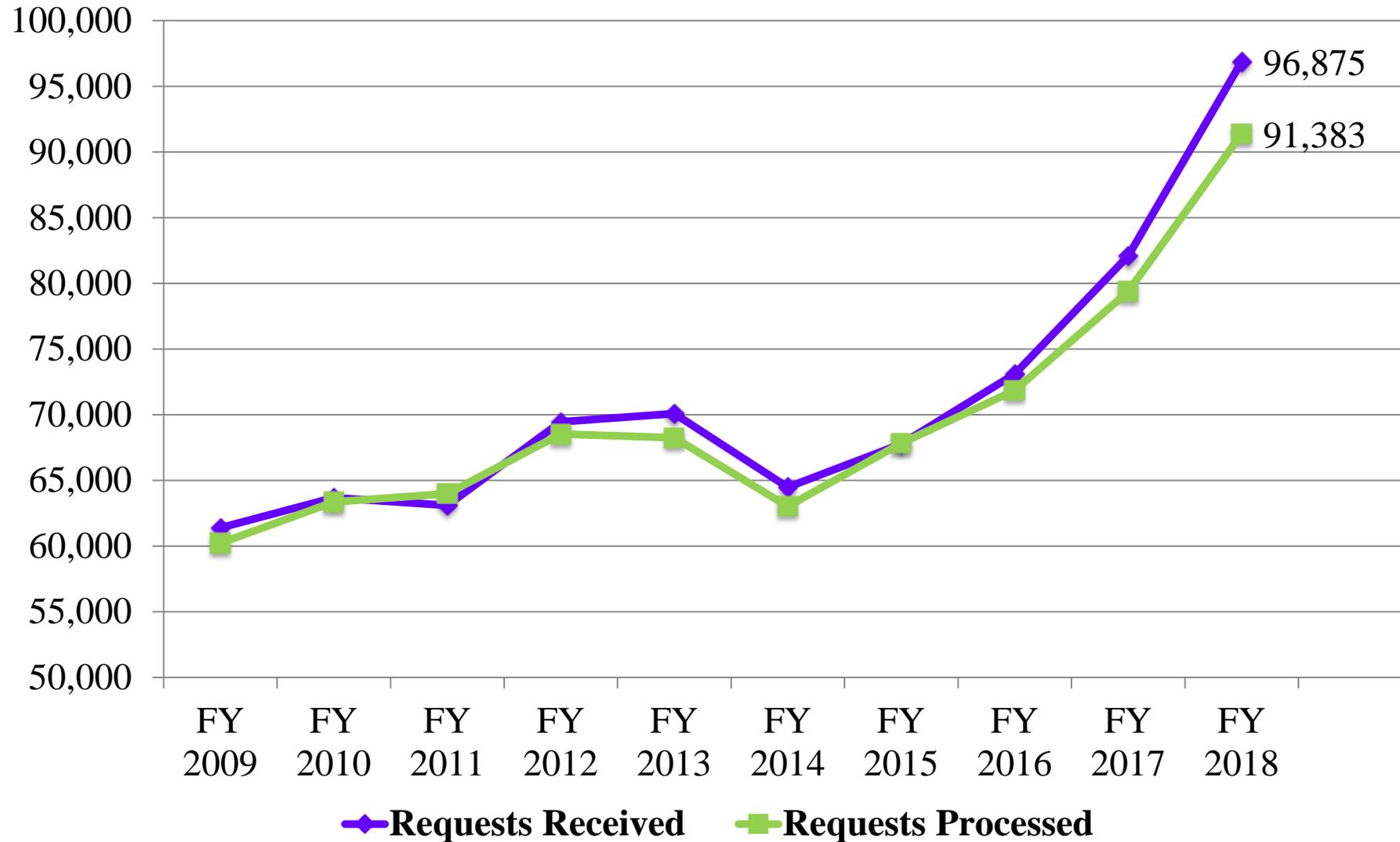


Freedom of Information Act

- How is the FOIA doing today after more than fifty years of existence?
- The public is using it more than ever.



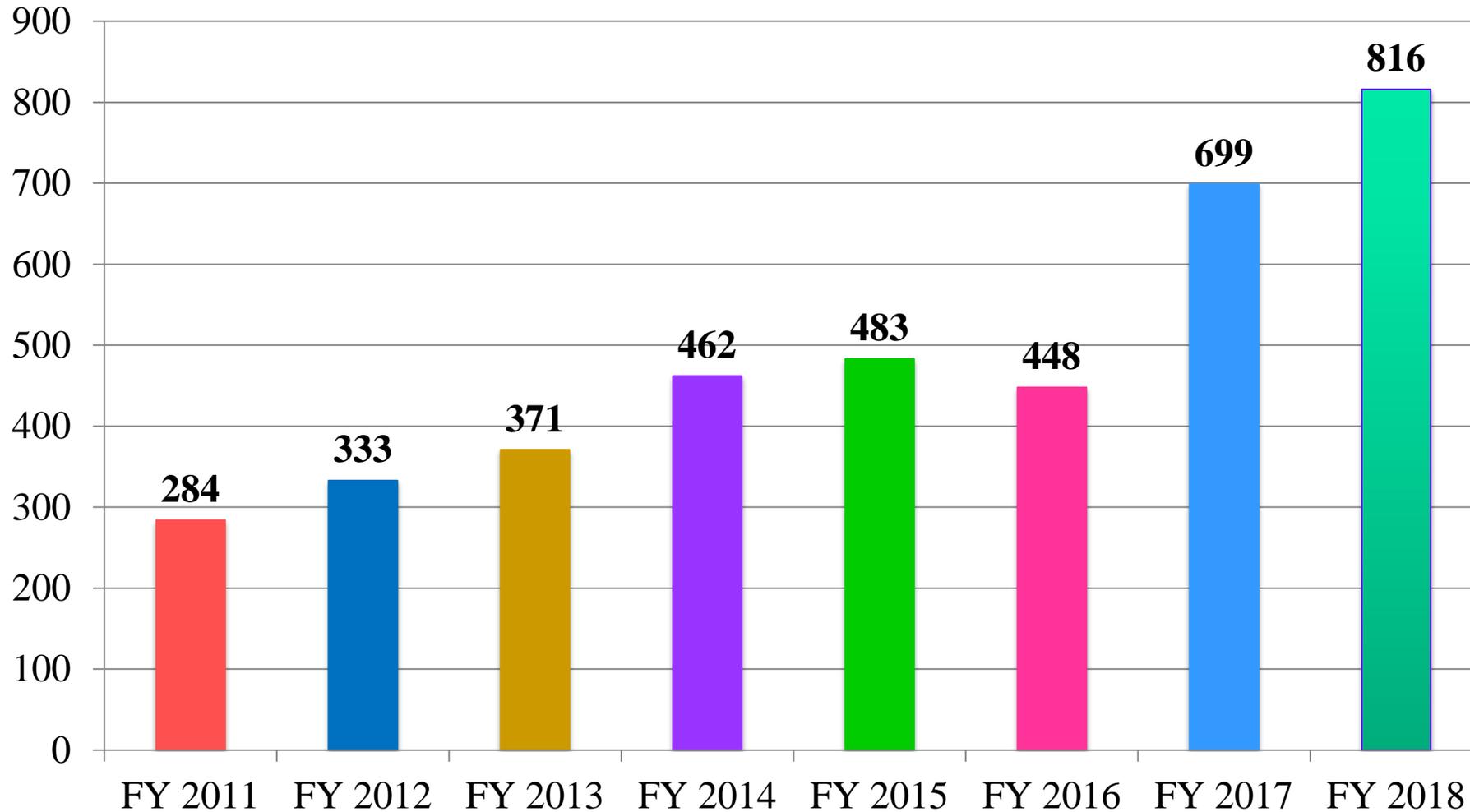
DOJ FOIA Statistics





FOIA Statistics

Government-wide Number of New FOIA Litigations



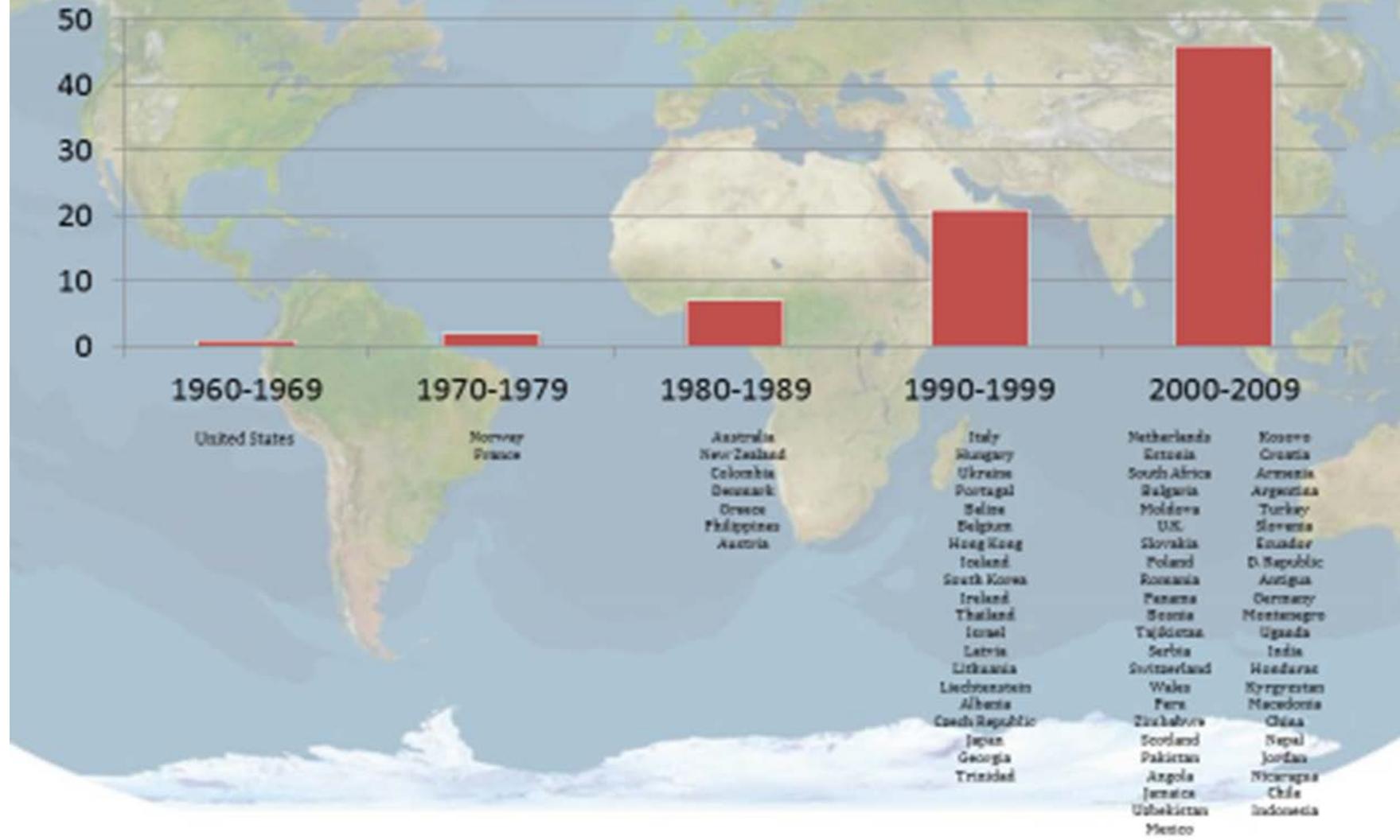


The United States was one of the first countries to adopt a Freedom of Information law.

Over the last 50 years, the FOIA has served as the foundation for many open government initiatives here in the United States and as a model across the world.



Adoption of Access to Information Laws by Decade Since U.S. Freedom of Information Act Passage





Currently, over 95 countries celebrate the use of laws that provide a right of access to information, which is the bedrock of open government.

The Department of Justice frequently meets with foreign delegations to help establish or improve other countries' Freedom of Information laws.



New OIP Guidance & Resources

- National FOIA Portal
Interoperability
- Chief FOIA Officer Designations
- Controlled Unclassified
Information
- Importance of Quality Requester
Services



New OIP Guidance & Resources

- OIP Guidance: 2018 Chief FOIA Officer Report Review and Assessment Guidance
- OIP Guidance: Adjudicating Administrative Appeals under the FOIA



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*National FOIA Portal
Interoperability*



National FOIA Portal **Interoperability**

- Guidance issued for Achieving Interoperability with the Freedom of Information Act (FOIA) Portal on FOIA.gov, February 12, 2019.



National FOIA Portal Interoperability

The *FOIA Improvement Act of 2016* required agencies to create a central, online request portal to allow members of the public to submit a request to any agency from a single website.



National FOIA Portal Interoperability

Two statutory standards for interoperability:

1. Agencies can accept requests via a structured Application Programming Interface (API), or
2. Agencies can accept requests via a formal, structured e-mail to a designated e-mail box.



National FOIA Portal Interoperability

To support interoperability each agency shall:

1. Maintain an account on FOIA.gov where agencies update their information about FOIA administration and their contact information, and
2. Maintain a customized FOIA request form tailored to an agencies own FOIA regulations.



National FOIA Portal Interoperability

Timeline for Achieving
Interoperability:

By May 10, 2019, agencies must provide a plan to OMB for how they intend to achieve full interoperability.²³



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Chief FOIA Officer Designations



Chief FOIA Officer Designations

- The FOIA requires agencies to designate a Chief FOIA Officer who is charged with “agency-wide responsibility for efficient and appropriate compliance” with the Act.
- The FOIA directs that these Chief FOIA Officers “shall be a senior official of such agency (at the Assistant Secretary or equivalent level).”



Chief FOIA Officer Designations

- The Department of Justice has long maintained that “[i]mproving agency FOIA performance requires the active participation of agency Chief FOIA Officers.”
- The Department of Justice issued a memorandum dated January 30, 2019, reminding agencies to review their CFO designations to ensure they are at the Assistant Secretary level or equivalent.



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Controlled Unclassified Information



Controlled Unclassified Information

DOJ and NARA have issued guidance on Decontrolling Controlled Unclassified Information (CUI) in response to a FOIA request, November 19, 2018.

- CUI designations do not control whether information can be disclosed by an agency
- FOIA should not be used as a CUI safeguard or as a disseminating control authority for CUI



Controlled Unclassified Information

- Disclosure determinations are based on the content of the information and applicable FOIA exemptions, not CUI designations.
- Once information has been disclosed in response to a FOIA request, it can no longer be protected as CUI and is essentially decontrolled by the agency.
- If agency nonetheless seeks to maintain CUI designation, it must consult legal counsel and/or OIP.



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**The Importance of Quality
Requester Services: Roles and
Responsibilities of FOIA Requester
Service Centers and FOIA Public
Liaisons**



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*OIP Guidance for Further
Improvement Based on 2018
Chief FOIA Officer Report
Review and Assessment*



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*OIP Guidance: Adjudicating
Administrative Appeals under the
FOIA*



Administrative Appeals

The FOIA provides requesters with a statutory right to administratively appeal an “adverse determination” an agency makes on a FOIA request.

The administrative appeal process affords benefits to both agencies and requesters.



Administrative Appeals

Setting out appeal procedures in FOIA regulations

- Ensures agency personnel and requesters understand the appeal process
- Requesters have 90 days to file an appeal
- Absent “unusual circumstances” agencies have 20 days to make a determination on appeal
- Notice of judicial review
- Notice of mediation services - OGIS



Administrative Appeals

Conducting an Independent, “De Novo” Review on Appeal

- Appeal authority should be separate from initial denial authority
- Agencies should use the “De Novo” standard of review for appeals



Administrative Appeals

Engaging with FOIA Professionals & Reinforcing Sound FOIA Processing Practices

- Appeals analysts should engage and communicate during the appeals process with FOIA professionals who initially handled the request.



Administrative Appeals

Ensuring an Adequate Administrative Record for Fee Waiver & Expedited Processing Decisions

- Judicial standard of review for decisions on requests for fee waivers

- Judicial standard of review for decisions on:
 - Requests for fee waivers &
 - Requests for expedited processingis based on record before the agency at time of determination.



Administrative Appeals

Communicating Effectively with the Requester

- Engagement can facilitate the effective adjudication of an appeal, focus the issues raised on appeal, bridge information gaps, and resolve or narrow the appeal.



Administrative Appeals

Communicating Effectively with the Requester

- Actions taken at the initial level can be affirmed, reversed, remanded, or a combination thereof by the appellate authority.
- Clearly communicate appeal determinations and actions taken to requesters.



Administrative Appeals

Offering the Option to Appeal Interim Responses

- Agencies should make interim or rolling releases when requests involve voluminous records, to facilitate access to the records.
- Requesters should be afforded the opportunity to appeal initial determinations made in each interim release.



Administrative Appeals

Consultations and Coordinations

- Agencies that received the request and provided the initial response should review the records on appeal.



Administrative Appeals

Effectively Managing Administrative Appeals Dockets

- Triage appeals based on complexity and expedited processing
- Triage appeals based on subject matter expertise
- Quality control and employee oversight



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Questions?

Kirsten Mitchell

Compliance Team Lead,
National Archives and Records Administration,
Office of Government Information Services

No Slides

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Principles and Practices for a Federal Statistical Agency



Brian A. Harris-Kojetin, CNSTAT Director
Census Bureau Sunshine Week
March 13, 2019 - Suitland, MD

What is CNSTAT?

- Established in 1972 as a standing unit of the National Academies, recommended by the President's Commission on Federal Statistics to provide an independent, objective resource for evaluation and improvement of federal statistical methods and operations.
- CNSTAT's mission is to improve the statistical methods and information on which public policy decisions are based; it also serves as a coordinating force in the decentralized U.S. statistical system.
- Over its 46-year history, CNSTAT has produced over 270 consensus, interim, letter, and workshop reports.

Who Serves on CNSTAT?

Robert Groves (*chair*), Math/Statistics

Mary Ellen Bock, Math/Statistics

Anne C. Case, Health Economics

Michael Chernew, Health Economics

Janet Currie, Welfare Economics

Don Dillman, Survey Research

Diana Farrell, Private Sector Data

Daniel Kifer, Computer Science

Tom Mesenbourg, Sr. Federal
Statistics Management

Sarah Nusser, Survey Research

Colm O'Muircheartaigh,
Survey Research

Jerome Reiter, Applied Statistics

Judith Seltzer, Sociology

C. Matthew Snipp, Demography

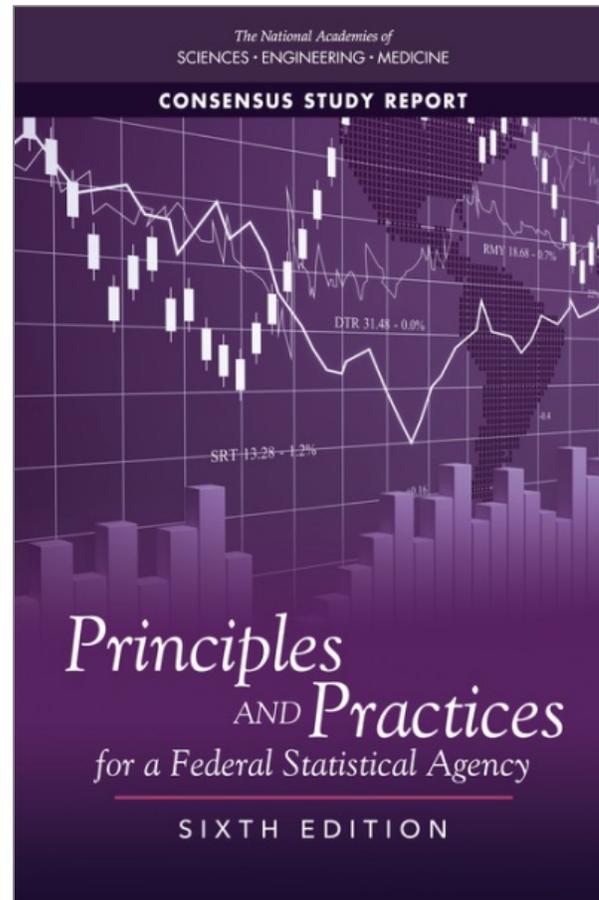
Note: all members serve *pro bono*

CNSTAT Funding

- ***Agency contracts/grants*** fund individual projects
- ***Core support*** comes from over 20 agencies: AHRQ, ASPE, BEA, BJS, BLS, BTS, Census, CIS/DHS, EIA, ERS/USDA, FIA/FS, FNS, HUD, MMS/NSF, NASS, NCES, NCHS, NCSES/NSF, NIA, SOI/IRS, SSA/ORES, NCVAS/VA
 - to maintain CNSTAT and undertake cross-cutting activities
- **THANK YOU!!!**

“Principles and Practices for a Federal Statistical Agency”

A Product of CNSTAT at the National Academies



Principles

Relevance to Policy Issues A federal statistical agency must be in a position to provide objective, accurate, and timely information that is relevant to issues of public policy.

Credibility Among Data Users A federal statistical agency must have credibility with those who use its data and information.

Trust Among Data Providers A federal statistical agency must have the trust of those whose information it obtains.

Independence from Political and Other Undue External Influence A federal statistical agency must be independent from political and other undue external influence in developing, producing, and disseminating statistics.

Thirteen Practices

1. A clearly defined and well-accepted mission
2. Necessary authority to protect independence
3. Use of multiple data sources for statistics that meet user needs
- 4. Openness about sources and limitations of the data provided**
- 5. Wide dissemination of data**
- 6. Cooperation with data users**
7. Respect for the privacy and autonomy of data users
8. Protection of the confidentiality of data providers' information
- 9. Commitment to quality and professional standards of practice**
- 10. An active research program**
11. Professional advancement of staff
12. A strong internal and external evaluation program
13. Coordination and collaboration with other statistical agencies

Openness about sources and limitations of the data provided

- Openness requires that data releases from a statistical program include
 - A full description of the purpose of the program
 - Methods used for data collection, processing, and estimation
 - What is known and not known about quality
 - Sufficient information for estimating variability
 - Results of research on methods and data
- Openness is more than providing estimates of sampling error
 - Describe other sources of error and quality frameworks
 - Limitations should be provided in sufficient detail to permit a user to take them into account in analysis and interpretation
 - Issue corrections publicly and in a timely manner

Wide dissemination of data

- A statistical agency should strive continually for the widest possible dissemination of the data it compiles, consistent with its obligations to protect confidentiality
- Information should be accessible in ways that make it as useful as possible to the largest number of users
 - For decision making, program evaluation, scientific research, and public understanding
- All data releases should be accompanied by careful and complete documentation or metadata

Cooperation with data users

- Within the limitations of its confidentiality procedures, a statistical agency should seek to provide maximum access to its data on an equal basis to all
- An effective statistical agency continually strives to learn from its data users and obtain input from them
- The goal is to make an agency's data as relevant, accurate, timely, and accessible as possible for the broadest possible range of users and uses

Commitment to quality and professional standards of practice

To ensure the quality of its products and practices, a statistical agency should

- Develop a strong professional staff
- Publish and implement formal quality standards
- Develop and understanding of the accuracy of the agency's data and how to convey the resulting measures of quality
- Document concepts, definitions, and data collection methods and discuss possible sources of error in data releases to the public

An active research program

- An agency's research program should include substantive issues for which the agency's data are compiled (but not take policy positions), and methodological and operational research to evaluate and improve data quality and procedures.
- Some benefits of a strong subject-matter staff:
 - Agency analysts understand the need for and purposes of the data and how the data will be used
 - Agency analysts have access to the complete microdata and are better able to help outside analysts understand and describe the limitations of the data.
 - Analyst's substantive research can help reinforce an agency's credibility through its commitment to openness

Who Uses P&P?

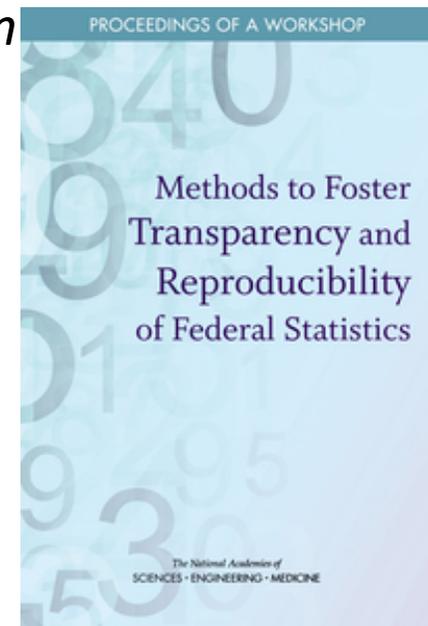
- Federal statistical agencies to inform department officials, advisory committees, and others
- OMB has cited P&P in multiple Statistical Policy Directives
- U.S. GAO has cited P&P in many reports
- It informed the establishment and later assessment of BTS
- It has been cited in statistical agency head confirmation hearings
- Janet Norwood in her 1995 book, *Organizing to Count*
- The Board of the American Statistical Association has endorsed P&P.

P&P was the first, but it is not the only statement of principles....

- *UN Fundamental Principles of Statistics*
 - *Created in 1994*
 - *Adopted by the General Assembly in 2014*
- European Statistics Code of Practice
 - Adopted 2005
 - Revised in 2011
- Statistical Policy Directive No. 1: Fundamental responsibilities of federal statistical agencies
 - Issued in 2014

Methods to Foster Transparency and Reproducibility of Federal Statistics

- Sessions included:
 - *Views of transparency from AAPOR and OMB*
 - *Benefits and costs of transparency: views from agencies*
 - *Foreign view of benefits and costs, and approaches used for transparency*
 - *Case studies*
 - *What does transparency (and reproducibility) mean operationally?*
 - *Making confidential data part of reproducible research*
 - *What does reproducibility mean for federal statistics?*
 - *Improving transparency of statistical data with standards for metadata and work processes*
 - *Building trust: summary of a workshop*



Upcoming Events and Reports

- **Forthcoming Reports**
 - Improving the American Community Survey: Proceedings of A Workshop
 - Reproducibility and Replicability in Science
- **CNSTAT Public Seminar**
 - National Statistics for Public Policy: Linkages among Federal, State, and Local Data, May 10, 2019
- **Upcoming Workshops**
 - Challenges and New Approaches for Protecting Privacy in Federal Statistical Programs, June 6-7, 2019

Thank You!

Contact Information

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- CNSTAT Website <http://www.nationalacademies.org/cnstat>

CNSTAT reports are available at the National Academies Press:
<http://www.nap.edu>

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No Slides

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