Author’s response to reviews

Title: Systematic Overview of Freedom of Information Act Requests to the Department of Health and Human Services from 2008 to 2017

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Author Response Letter


REVIEWER COMMENTS:

Reviewer #1 (Remarks to the Author):

Thank you for the opportunity to review this wonderfully simple and powerful manuscript. I always enjoy reading papers that ask small questions with large implications. I believe your introduction is great. The discussion recommendations are in line with your findings. I do not see any forms of bias that may compromise the integrity of the work. Because this manuscript is aggregating publicly available data and there are not many analytical decisions that were required, I have only a one minor point.

1. What was the rationale for the processing time categories? 1-20 days is straightforward because of the statutory requirement, but 21-60 and 61+ are less straightforward. My only concern is that unequal time groups may visually skew your findings. For example, if an agency commonly responds to complex requests in less than 30 days, this information may be diluted if the category extends all the way to 60 days. If a rationale exists, please provide it.
Response: We would like to thank Reviewer #1 for their supportive remarks and appreciate the opportunity to respond to this comment. The Department of Health and Human Services’ (HHS) Freedom of Information Act (FOIA) annual reports include the number of simple and complex requests processed within 20- and 100-day increments across categories ranging from &lt;1 to 200 days and 200 to 400 days, respectively. With the information presented across so many categories, we found it difficult to comprehend and compare each agency’s processing speed. We were also limited by the fact that the median processing speeds could not be calculated using this data. However, we were able to transform the data into what we believe are three meaningful increments of processing speed to provide the best balance between detail and reader comprehension. We used the &lt;1-20 processing time increment because of the statutory requirement that agencies respond to FOIA requests within 20 days. When FOIA requests are litigated and plaintiffs prevail, it is common for courts to order document production within 60 days, as courts frequently consider 60 days as a reasonable amount of time for agencies to fulfill FOIA requests. Therefore, we selected 60 days as the upper bound for the 21-60 day processing time category. In response to this comment, we have added text to justify our selection of these 3 time processing categories as follows:

Page 6, Line 144: “The FOIA annual reports include the number of simplex and complex requests processed within 20- and 100-day increments across categories ranging from &lt;1 to 200 days and 200 to 400 days, respectively. We report processing times in three time increments: &lt;1, 21-60, and 61+ days, based on the 20-day statutory response requirement and because when FOIA requests are litigated and plaintiffs prevail, courts commonly order document production within 60 days.”

Reviewer #2 (Remarks to the Author):

Overall: This excellent and relevant short paper describes in a clear and engaging manner the FOIA requests made in the US from 2008 to 2017 to HHS agencies. The paper is an important contribution to the contemporary debate on data access.

Response: We thank Reviewer #2 for their support and helpful review of our manuscript.

1. The paper might be strengthened by 1) combining the Discussion more with the Introduction and 2) appealing more internationally with exploration into parallel agency practices (e.g., EMA’s). After a minor revision, I recommend the paper for publication. My specific comments - that primarily are of minor importance - are below:

Response: Thank you for this suggestion. We believe the Introduction and Discussion sections complement each other well, with the former focused on providing a general overview of FOIA and its importance to public health and research integrity, and the latter focused on our findings and their potential implications for HHS agencies and FOIA requesters. Given that we think the two sections are well connected, and that Reviewer #1 explicitly complemented our organization of the manuscript and the material covered in the Introduction and Discussion sections, we have decided not to make revisions to the text in response to this comment.
However, we appreciate the suggestion that a detailed study comparing FOIA to the information request processes of parallel agencies internationally would be of interest. Such a comparison falls outside the scope of this paper, and would require a longer, separate effort. But we will consider this for future work.

2. (Title: Maybe indicate what type of study the paper describes e.g. systematic overview and write "from 2008 to 2017")

Response: We have revised the title to specify the type of study the paper describes.

Page 1, Line 1: “Systematic Overview of Freedom of Information Act Requests to the Department of Health and Human Services from 2008 to 2017”

3. Abstract: clear and to the point (obs. 69.6% + 18.9% + 11.6% =100.1% - maybe leave out percentage decimals). Maybe hint in abstract why request costs increased 3.5 times.

Response: Thank you for this comment. We would prefer to keep in percentage decimals to maintain consistency between how the information is presented in the abstract and the rest of the manuscript. The 100.1% is due to rounding. However, we defer final formatting style to the journal.

To the Reviewer’s point about why costs increased 3.5 times, we are not certain why processing costs to HHS per FOIA request more than tripled during the 10-year span. One possibility is that the growing number of employees responsible for FOIA requests has led to an increase in processing costs at the agency. We have added the following text in the Discussion rather than the Abstract section, as we believe this speculative explanation is most suitable there.

Page 8, Line 23: “Growth in the number of employees responsible for handling FOIA requests may have contributed to the increase in processing costs.”

4. Introduction: logical structure and good relevant content

   a. (Maybe consider writing "non-disclosed" throughout instead of "unreleased")

Response: Thank you for this suggestion. We used “unreleased” because it is the term generally used in reference to records sought through FOIA requests. Therefore, we believe that this term is more appropriate to use in this context than “non-disclosed.”

   b. (obs underline under New York Times)

   c. Maybe include a parallel to the FOI handling of other institutions (e.g. EMA)

Response: Please see our response to this Reviewer’s Comment #1.

5. Methods: solid methodology outline
6. Results:

a. I assume that "No responsive records or withdrawn requests" are the primary "reasons other than exemptions" for denial?

Response: Yes, the Reviewer is correct in that no records or withdrawn requests are the primary “reasons other than exemptions” for full denials, as they comprise nearly 60% of those denied. We provide a reference to Table 2, where readers can find a more detailed breakdown of the “reasons other than exemptions” for full denials.

b. If possible, maybe provide a qualitative example of request differences between CMS and FDA to give a possible insight to the differences in response time

Response: Thank you for this suggestion. We believe that selecting a few examples, in an effort to explain the differences in response time between CMS and FDA, may not be the best approach to illustrating differences between the two agencies. Since we could not analyze the underlying FOIA requests, and thus do not have a sense of which types of records may be commonly requested and representative of requests to that agency, our insight into what might have slowed things down on the agency/respondent side based on a few examples may not be representative. However, we have added a couple possible explanations for FDA’s longer processing time based on further examination of the data.

Page 8, Line 217: “In addition, FDA addressed potentially complex issues related to FOIA exemption 4 (trade secrets and other confidential commercial information) at a higher rate than CMS, and fully denied requests less frequently, which may have also contributed to FDA’s slower processing speed.”

7. Discussion

a. “most commonly because agencies could not locate responsive records” - this seems rather strange; if possible, please provide the exact number of missing records

Response: There could be multiple reasons in which a request would be denied on the basis of no records. For example, we describe that poorly articulated requests may be a contributing factor. Also, information may be requested from agencies that they have not collected, such as an FDA inspection report during a certain period that wasn’t carried out. Unfortunately, no further information or detailed breakdown regarding why requests were denied on the basis of no records is available, and thus we cannot provide an exact number of those that were placed in the category because the agency was missing a requested record that it should have had. Nevertheless, in response to this comment, we have added to the text that requests for records that agencies have not collected may also contribute to the large number of requests denied on the basis of no records.
Page 7, Line 195: “Poorly articulated requests and requests for records that agencies did not
collect may contribute to the large number of requests denied on the basis of no records.”

b. "Requests to FDA were generally more complex than those to other HHS
agencies” - please indicate if the agencies use the same criteria to evaluate
complexity

Response: The criteria used to evaluate the complexity of requests and assign requests to the
simple or complex track is not standardized across agencies. We have added text to clarify this
point.

Page 5, Line 141: “The criteria, such as the estimated search and redaction time, used to assign
requests to the simple or complex track may vary across agencies.”

c. maybe provide a reference after this sentence: "suggesting that efforts and
policies implemented during the Obama administration to reduce backlogs
have been effective"

Response: Thank you for this suggestion. We have added the following reference to an article
that describes that HHS meet the objective outlined in an Obama administration order in 2009 to
take steps to reduce FOIA backlogs by ten percent each year.

Page 8, Line 224: “The number of backlogged requests across HHS agencies was reduced by
76.5% over the 10-year span, suggesting that efforts implemented in response to an Obama
administration instruction in 2009 to reduce federal agency FOIA backlogs have been effective.”

https://unredacted.com/2017/02/09/hhs-only-department-to-meet-obamas-foia-backlog-
reduction-order/)”

d. "Costs to HHS per FOIA request more than tripled during the 10-year span” -
if possible, maybe provide possible explanations for this

Response: Please see our response to this Reviewer’s Comment #3.

e. ("include for the FDA," - maybe use colon instead of comma)

Response: We have made the suggested grammatical change.

f. "Requests to FDA were generally more complex, took longer," - suggest
"took longer time to process,"

Response: As suggested, we have revised the text to clarify that requests to FDA took longer to
process.
Page 10, Line 286: “Requests to FDA were generally more complex, took longer to process, and were costlier to process than those to CMS.”

8. References: focused and up-to-date

9. Box: might be better to combine with Table 3

Response: Thank you for this suggestion. We agree that it would be more clear for readers to have the descriptions of the exemptions in the footnotes of Table 3. Therefore, we cut the Box and added the descriptions of the exemptions to Table 3.

10. Table 1: It appears that there was an increase in fully granted requests from 2009 to 2010 that the authors contribute to the Obama administration - it might be of interest to some readers to know what the exact change in regulation was. (obs parenthesis "(60.6%)*")

Response: We believe the reviewer is referring to the reduction in backlogged requests, which we had suggested were influenced by an effort during the Obama administration to reduce FOIA backlogs. We have revised this section to provide additional information about this effort.

Page 8, Line 224: “The number of backlogged requests across HHS agencies was reduced by 76.5% over the 10-year span, suggesting that efforts implemented in response to an Obama administration instruction in 2009 to reduce federal agency FOIA backlogs have been effective. The FOIA director at HHS, Michael Marquis, has noted that improved communication with requesters and greater staff accountability were particularly instrumental in meeting the backlog reduction goals.”

11. Table 2: I wonder why so many would redraw data requests from the FDA - if possible, please provide some explanation for this (e.g., difficult application processes?)

Response: There could be many reasons for withdrawn requests, however, based on our conversation with the FDA FOIA Director, as well as our own experience, the most common reason for withdrawn requests is that requesters do not want to pay the associated fees. We have added this point to the text.

Page 7, Line 197: “Many requests are withdrawn after requesters are quoted a processing fee.”

12. Table 3:

   a. It might give a better overview if the exemptions are provided as footnotes (then you could probably leave out the Box).

Response: Please see our response to this Reviewer’s Comment #9.

   b. As indicated in the Introduction there were issues with conflicts of interests in data request access - if possible, maybe provide some insight into the COI
laws for staff in the HHS in relation to the relative high number of exemptions based on Ex. 4 and Ex. 6.

Response: We believe the reviewer is referring to the concerns raised that information requested through FOIA may be improperly denied or withheld. We are unaware of any additional rules or laws regarding conflict of interest that apply specifically to employees handling FOIA requests, however, they are subject to the ethics and conflict of interest rules that apply to government agency employees. We appreciate the suggestion, but since we could not assess the appropriateness of agencies’ withholding information, we would not like to speculate about the extent that conflict of interest may influence employees responsible for FOIA requests nor about the efficacy of existing conflict of interest laws.

13. Figure 1: Easy to follow

14. Figure 2: Maybe indicate in the text whether the Obama administration’s regulation change was the primary reason for cost increase.

Response: Thank you for this comment. We do not believe the Obama administration’s instruction to reduce agency backlogs was the primary reason for the increase in processing costs, however, we have added text to describe how an increase in employees responsible for FOIA requests likely contributed to the growth in processing costs.

Page 8, Line 232: “Growth in the number of employees responsible for handling FOIA requests may have contributed to the increase in processing costs.”

15. Supplemental eTable: No comments.