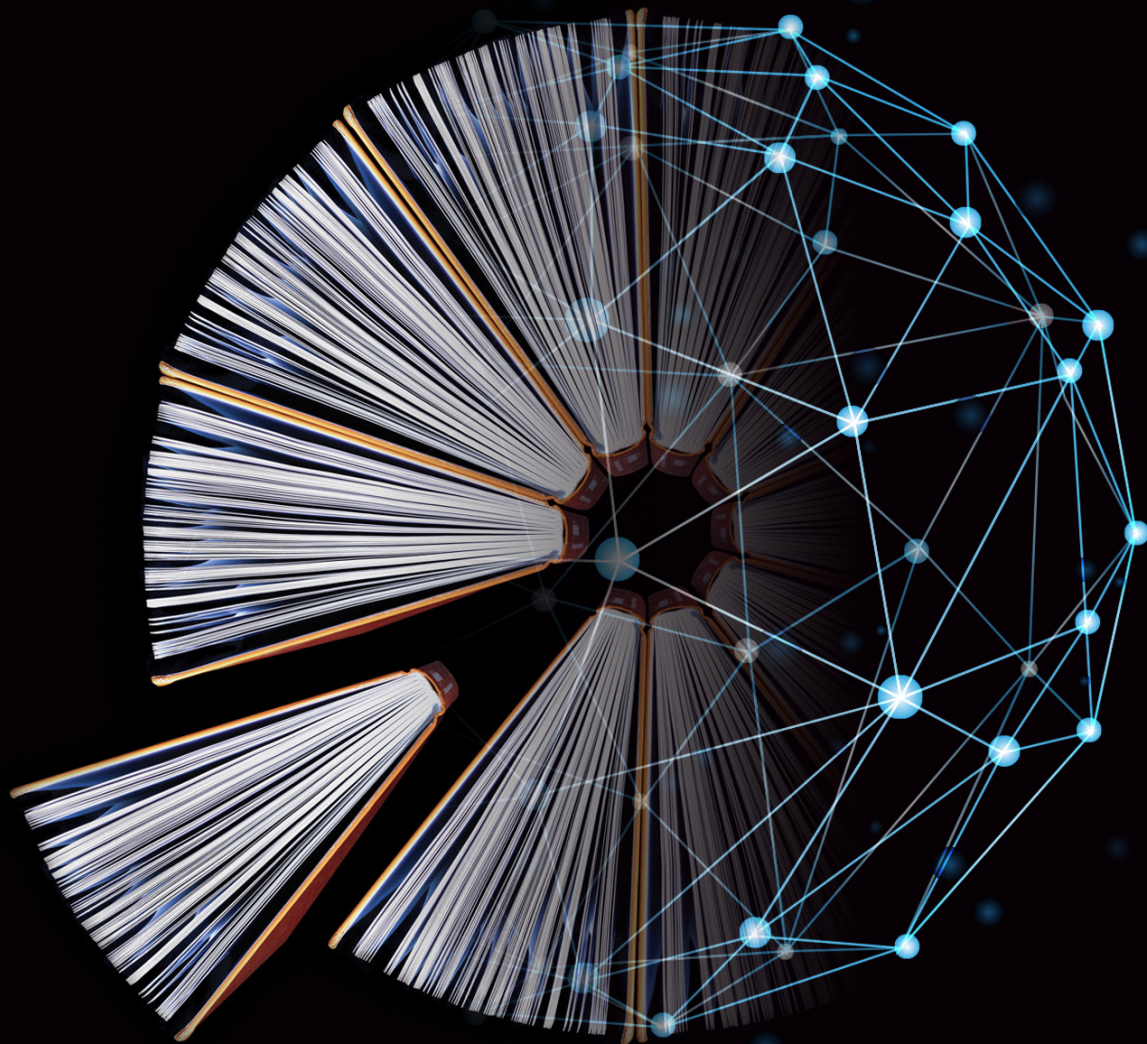


Deloitte.



**Perspectives on
Freedom of Information Act
(FOIA) Program Effectiveness**
Reimagining transformation

The purpose of this White Paper is to provide Deloitte's¹ perspectives on how leaders of organizations can identify opportunities to increase the effectiveness and efficiency of information disclosure under public access laws, such as the Freedom of Information Act (FOIA). This White Paper presents options for organizations to consider when analyzing their existing FOIA processes and enabling tools to identify which are working well and recommend potential improvement areas. We refer to this as a "FOIA Diagnosis."

We have grounded our approach based on our extensive experience assisting organizations in identifying FOIA efficiencies and opportunities to increase FOIA effectiveness. These include both federal and state government agencies with services of similar size and scope as discussed in this White Paper, as well as many others, with large federal agencies.

This White Paper is organized as follows:

1. Understanding
2. FOIA Diagnosis Overview
3. Typical Phased Approach and Anticipated Outcomes



Perspectives on Freedom of Information Act (FOIA) Program Effectiveness

Authored by: *Deloitte Financial Advisory Services LLP | 1919 North Lynn Street | Arlington, VA 22209*

1.0 Understanding

In the 50 plus years since the passing of the FOIA, general attitudes toward openness and transparency among government agencies have changed. Access laws, like FOIA, are now heavily relied on to provide transparency to the citizenry. As a result, we have found that the general FOIA landscape for agencies has evolved from relatively small numbers of simple, straight forward requests for records with limited sensitivities and equities to large, complex, and comprehensive individual requests that require the search, review, and production of multiple data sources (e.g., databases, physical documents, etc.).

The number of incoming FOIA requests is not the only challenge agencies face. Government technology modernization initiatives have created an explosion in the volume of records and data stored by agencies and the rate at which this information is generated is speeding up.

For agencies receiving and responding to FOIA requests, this means a significant expansion in both the number of responsive records and the complexity of records searches and reviews. Not all FOIA requests are alike, either; some are uniform and routine in nature and, therefore, require minimal effort after the first request. Others, such as those submitted by the news media, corporations, and civil society organizations, are broader in both breadth and scope, making them exponentially more complicated. These complex requests require more sophisticated collection, search, and review capabilities.

The massive surge in requests received and the volume of responsive records collected has overwhelmed the traditional FOIA processing methods, creating potential process and technology gaps. These gaps have led to significant and increasing FOIA backlogs and a steady increase in processing costs. Agencies are faced with the difficult decision of shifting valuable resources from core mission-related projects to meet the growing demands of FOIA or let their FOIA administration suffer.

The increased FOIA demand and other open government mandates are likely to only continue to grow.

With so many different challenges facing organizations, there are benefits from an evaluation of their FOIA operations to determine what is working well and potential areas of improvement. Within this overall review, some areas of focus include:

- Identifying operational processes that could be more efficient and effective within the context of the organization's FOIA environment (e.g., specific mandates, risk posture, available budget/resources, culture, etc.).
- Examining technologies currently owned by the organization to determine if they may better enable the execution of the FOIA processes.
- Examining other technologies that may have a "dual-use" purpose with enabling FOIA as well as other operations within the organization.

2.0 FOIA Diagnosis Overview

Deloitte regularly works with FOIA organizations to help them transform how they approach transparency and disclosure. Our typical FOIA diagnosis includes an analysis of an organization's FOIA mandates, processes, enabling technologies, workforce, culture, and outcomes to identify what is working well, potential gaps and roadblocks, and identify enhancement opportunities.

We have found that FOIA diagnosis has been a useful means for enabling agencies to identify a range of options to improve their FOIA operations, of varying sizes and impact, allowing them to make data-driven broad, sweeping adjustments or small, incremental changes, as best works for them. There are several benefits of completing FOIA diagnosis, including:

- **Defining the current state:**

A FOIA diagnosis typically starts with an identification of the current approach, including defined policies and procedures as well as the undefined and “real” missing elements from what is on paper. This understanding also includes examining the applicable mandates that guide the FOIA processes, the governance, as well as the stakeholders, influencers, and disruptors involved, even if they do not have a defined role.

- **Understand what is working well and identify perceived gaps (and the impacts of gaps):**

Identifying what is working well is pivotal to our approach. Assessments are not about making change for change sake but keeping and enhancing current processes that have and will continue to serve the organization. Further, we have found enhancing an existing process versus a total reengineering bodes well in the implementation phase to better ensure lasting change.

We have seen that identifying gaps between an organization's current approach and a desired future-state have many practical benefits. It can start the conversations for an organization to establish or revise its FOIA program's overall goals. It also allows an organization to see the impact of these gaps in several ways—the drag on program efficiency, the potential cost-savings, and the impact on the strongest assets of a FOIA program—its human subject matter experts. Taking the time to surface possible frustrations or identifying where individuals could serve in roles that better align with their talents and goals can further enhance an organization's ability to have an efficient and effective FOIA program.

- **Create a flexible roadmap for optimization:**

Many organizations desire to make positive change. However, without broad definitions of end-state success and tactical steps to achieve this success (e.g., a “roadmap”), even the best of intentions can flounder into inaction. Our FOIA diagnosis typically includes multiple recommendations with identified outcomes and steps to help achieve the desired results.

The scope of the effort will determine the level of detail of the recommendations on the roadmap. For example, a high-level recommendation could include a prioritized list based on an agreed-upon approach tied to expected impact. A more detailed set of recommendations could include a detailed business analysis of each recommendation allowing them to be “shirt-sized” by level of effort, cost, etc. This approach, regardless of the level of specificity could allow an organization to make more informed, data-driven decisions based on the interdependencies of recommendations and to make incremental progress when they lack the time or funds to implement comprehensive change.

A FOIA diagnosis can be very powerful. There are, however, a few avoidable and common mistakes (e.g., “pitfalls”) that can undercut its value. Based on our experiences, we have identified the following common pitfalls that should be considered when conducting an FOIA diagnosis:

- **Limiting input to leadership:**

While conversations with key FOIA leaders are essential to understanding the overall goals and definition of success for a FOIA program, it is key to understand the “day-to-day” process of handling a FOIA request and the practical realities of following the current processes using the available technology.

- **Pre-identification of the areas to be addressed:**

FOIA programs face many common challenges, including many based on the need to “do more with less.” The causes of these challenges can seem obvious, such as lack of personnel, arcane process steps, or insufficient technology resources. But skipping the diagnosis and moving directly to the prescription can cause underlying influences and disruptors to continue to limit the success of a program.

- **Focusing on a single, across-the-board solution:**

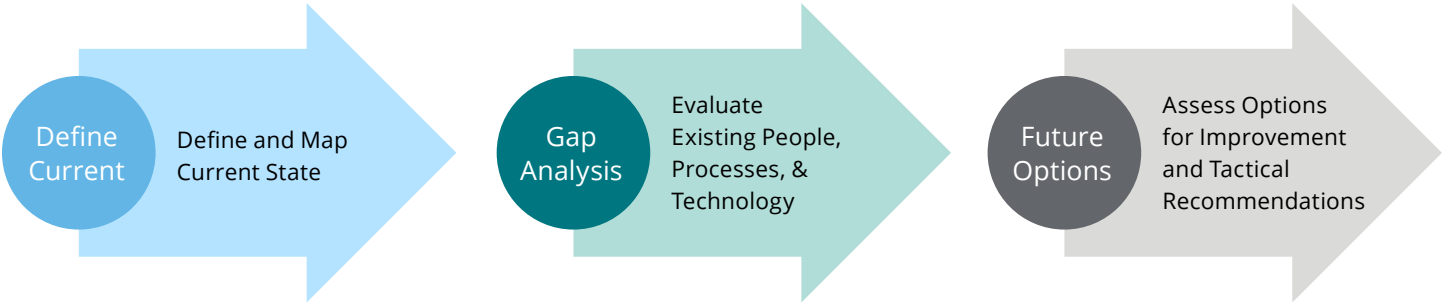
To make impactful change, organizations can seek out large-scale solutions, either a wholesale revamp of process or implementation of a large technology platform. While both may ultimately be needed, often smaller, incremental changes can have tremendous impact. Focusing on a solution before understanding the range of potential options can limit the ultimate return on investment of making improvements.

These pitfalls are all avoidable with appropriate preparation, diligence, expertise, and resourcing—and if the appropriate expectations are set.

3.0 Elements of A FOIA Diagnosis and Anticipated Outcomes

Based on our experience and leading practices, Deloitte focuses on three specific elements in conducting a FOIA diagnosis, with defined outcomes. The three elements are: (See Figure 1).

Figure 1: Three Elements of A FOIA Diagnosis



A FOIA diagnosis that includes these three elements can take approximately eight to twelve weeks to complete. It can be “flexed” based on several variables - to be more or less detailed, focused on less or more areas, etc. Scoping discussions are critical to helping you achieve across-the-board alignment.

3.1 Element 1: Define the Current State

To effectively define the current state, high-level discussions with sponsors to identify goals and outcomes of existing approaches should occur to identify the relevant policies, key stakeholders, risk posture, and map out the organization’s FOIA workflow, identifying inputs, interdependencies, and outputs. While process documentation should also be utilized, interviews with key stakeholders will complete the definition of how the workflow is conducted and identify any deviations.

When defining the current state, we have found it is extremely helpful if our personnel work with the organization’s FOIA subject-matter experts who possess the requisite knowledge and experience and can “shadow” the organization’s daily FOIA operations to gain an experiential perspective.

A full current state definition should also include a comprehensive evaluation of the technologies used throughout the FOIA data lifecycle of request receipt, record

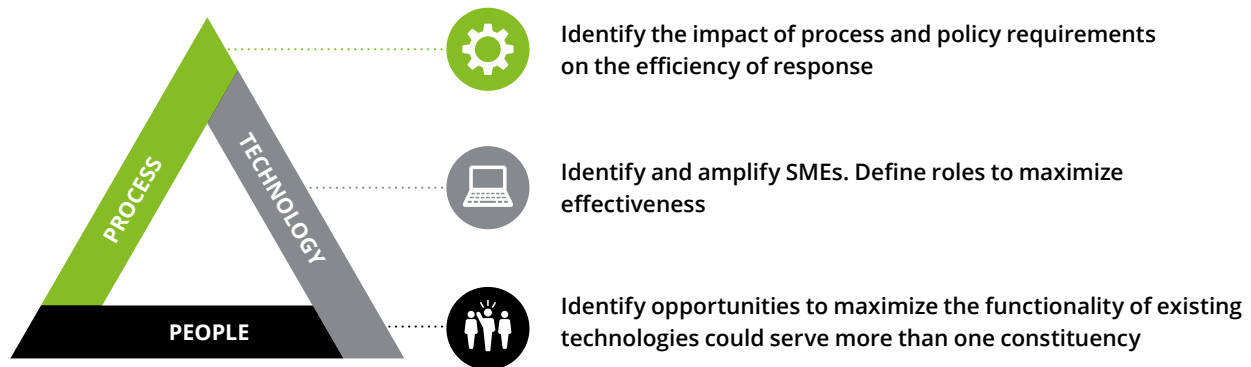
identification and collection, review and redaction of materials, and final release of information.

Anticipated Outcome(s): A map of existing FOIA workflow, including supporting process documentation.

This can serve as a key artifact when educating other interested parties on the current state of FOIA.

3.2 Element 2: Gap Analysis of Existing People, Processes, and Technology

Once the current-state is defined, the second element of a successful FOIA diagnosis is often to identify existing leading practices and evaluate potential gaps using a “People, Process, Technology” framework (See Figure 2). This approach allows potential gaps to be viewed through multiple lenses so that proposed solutions are able to help you address all impacts. The figure provides some examples of what may be examined in each portion of the framework.



People

The individuals participating in the FOIA process are the bedrock of its success. Factors that are typically examined include:

- Are all the right stakeholders involved, and involved at the right time? Are there appropriate people involved to properly address the organizations risk position?
- Do key participants have the appropriate knowledge and bandwidth to meet their assigned role?
- Are there key competencies missing from the current approach?
- How can the individuals involved maximize their substantive knowledge?
- What burdens facing participants can be removed or avoided?

Process

It is important that organizations have an FOIA process that meets their objectives, rather than having a process that is dictated by unnecessary constraints. Factors that are typically examined include:

- What are the requirements defining process? Do they all apply and do they all need to be addressed in the current manner?
- Is the process fully defined? If so, is this definition documented and followed consistently?
- Is the process as efficient as possible, while matching both the organization’s overall culture and risk position?
- Does the process create requirements for a technology solution? Are those being addressed? Does the process leave room to maximize existing technologies outside of the current FOIA approach?
- How does the process compare to other industry-leading approaches?

Technology

Based on the optimal process, an organization should seek technology solutions that are flexible to meet their process requirements and change over time. Technology solutions should be of a size, scope, and cost that matches the need of an organization while maximizing the benefits of automation. Factors that are typically examined include:

- Is the current technology configured and implemented to maximize use of its features?
- Does the technology meet all the core needs of the organization’s workflow? If not, are there additional technologies, including those within the organization (e.g. email and records systems) that could fill these gaps?
- Does the technology offer automation and analytics that can increase efficiency within the workflow? If not, what technologies of similar size and cost offer increased capabilities?
- Does the technology allow for flexible use over time? If not, what technologies of similar size and cost meet this need?
- Does the technology have features and capabilities that can benefit an organization outside of FOIA? If not, what technologies of similar size and cost offer this additional benefit, while still meeting necessary policy and risk constraints?

3.3 Element 3: Assessment and Recommendations

The third element of a successful FOIA diagnosis is the development of a series of recommendations, based on the identified gaps and their attendant impact and risk level, to either close the gaps or reduce them. Recommendations may also focus on existing practices that should continue or be enhanced. These recommendations should be tailored to the organization and include tactical considerations and next steps. Multiple recommendations are often developed, considering the time and cost to implement, as well as both the short-term

and long-term return on investment. Where possible, the potential phased steps for implementing the recommendations should be considered to provide an organization the maximum flexibility to make incremental change where necessary. Potential interdependencies of the recommendations and optimal sequencing should also be included.

Anticipated Outcome(s): Detailed report defining gaps and recommendations, including tactical implementation steps,

quantification of cost (both time and dollars), and estimate of return on investment. Recommendations are typically mapped to the “People, Process, Technology” framework. An assessment of multiple industry technology options, including a feature comparison with the organization’s existing is often provided. These recommendations can serve as a roadmap for the organization in demonstrating commitment to on-going improvement of their FOIA approach.

4.0 Deloitte’s FOIA Experience

Deloitte’s Government & Public Services (GPS) practice—our people, ideas, technology and outcomes—are all designed for impact. Our team of more than 12,000 professionals across the country bring fresh perspective to help organizations anticipate disruption, reimagine the possible, and fulfill mission goals. Whether at the crossroads of artificial intelligence and workforce transformation, cyber and IT modernization or digital and citizen experience—we bring actionable insights to drive bold and lasting results. Our shared purpose and passion help organizations make an impact and improve the lives of citizens. Deloitte’s GPS practice serves all 15 U.S. Cabinet-level agencies, nearly all DHS Components and Offices, all branches of the Department of Defense, most civilian agencies, most national security agencies, major global donor institutions, many scientific research and development organizations, and many numerous public, private, and academic institutions.

Deloitte’s FOIA offering, also known as Deloitte Disclosure, has successfully helped government agencies improve their FOIA operations and eliminate annual backlogs. We focus on finding a tailored solution for each specific client and provide a wide-range of services to our FOIA clients. From advising on workflow approaches and maximizing technology to assisting with change management when new processes or technologies are rolled out, we provide direct support in improving FOIA operations. Through our deep understanding of the technology platforms in the FOIA, declassification, records management, and litigation support industries, we recommend

technologies that are designed to help our clients meet the specific challenges they face – from a comprehensive, end-to-end FOIA processing platform to smaller accelerators that handle video transcription and redaction. We are “in the trenches” with many of our clients, processing over 50,000 requests annually for clients including EPA, DoS, ICE, U.S. Citizenship and Immigration Services (USCIS), Customs and Border Protection (CBP), and Health and Human Services (HHS). In assisting these agencies to respond to FOIA requests, we follow agency-specific processes and utilize a wide-range of technology solutions. This gives us perspective on what works, and doesn’t work, in a full range of circumstances and constraints.

FOIA support projects that Deloitte has executed for government agencies and organizations include the following:

- One of the largest regional transportation authorities in the country: A bi-state agency, subject to FOIA requests under the laws of two separate states was faced with increasing numbers of requests due to high-profile investigations. The bi-state agency engaged Deloitte to assist in evaluating their current FOIA workflow approach and technology and provide recommendations for improvement. Over the course of several months, Deloitte conducted an in-depth analysis of the bi-state agency’s FOIA program. We interviewed key stakeholders within the FOIA, Legal, and IT groups, as well as individuals within the business units that were tasked with identifying responsive data. We observed and mapped the current-state approach and utilized

their existing technology. Because of our analysis, we provided the bi-state agency with a comprehensive report of our findings, recommendations, new workflow mapping, and technology recommendations. Our findings including the creations of new Standard Operating Procedures, streamlining the workflow, staffing (including organization realignment and expansion of headcount within the FOIA group), and implementation of a technology platform that included a workflow management system, data collection capabilities, and analytics and machine learning. We made recommendations across 10 key areas, with specific steps and measures of success for each. In addition to our findings and recommendations, Deloitte also provided the bi-state agency with direct FOIA backlog reduction support. Our analysts worked with the bi-state agency’s FOIA team within their existing technology and then worked with them to create a custom approach within a technology platform to meet their workflow needs, accelerating the processing time to complete each FOIA request. During an eight-week pilot program, experienced FOIA analysts handled requests totaling 60,000 pages. These were some of the most complex and challenging requests received by the bi-state agency. Because of the pilot program, the analysts were able to handle 3,000+ pages per analyst per week. De-duplication and analytics were used to quickly narrow down a responsive data set and reduce processing times. The analysts also identified common items that could benefit from assisted redaction and automated handling.

4.0 Deloitte's FOIA Experience (continued)

- **EPA:** Deloitte Consulting LLP currently has 27 full-time dedicated employees who assist the EPA with FOIA, Congressional Inquiry, and litigation support assistance. In addition to routine FOIA processing and litigation support tasking, Deloitte Consulting also assists the EPA with advising on implementation of leading practices, developing Standard Operating Procedures, providing training and customer support to end-users, and providing infrastructure and platform support services. Deloitte Consulting assists EPA with end-to-end support in responding to thousands of FOIA requests and has provided FOIA review support for EPA, using attorneys trained in document review and FOIA-specific issues and exemptions. For one FOIA-litigation matter, the team performed analysis using near-duplicate detection to further reduce the FOIA review universe by more than 80 percent, resulting in review of only 37,000 records out of the original 200,000 that had been collected and loaded to the Relativity platform. For the eight years we have been working with EPA, Deloitte Consulting has been helping it to find efficiency gains and cost savings in their FOIA response efforts. In 2014, the agency did not have the mechanisms in place to appropriately track requests received, manage document collections, and track review progress and productions to requestors. Deloitte Consulting worked together with the EPA to centralize its FOIA response workflows and processes. We helped with creation of a central portal to receive FOIA assistance requests and developed User Acceptance Training and new guidelines and processes, which we rolled out to the agency in a phased approach during the second half of 2014. We have continued to improve upon that system to help the agency better manage workflows and streamline responses.

- **ICE:** Deloitte has been working with the ICE FOIA Office over the past five years in its efforts to confront their FOIA response backlog and modernize and improve the FOIA review and response process. We leveraged existing eDiscovery approaches and technologies and customized and developed an iterative workflow to meet ICE's specific needs and tight timeline to achieve impactful results. ICE was faced with a significant backlog of FOIA requests, in part due to a large set of referrals from another component within the Department of Homeland Security. In one fiscal year (within 10 months), Deloitte reviewed and closed out 60,000 FOIA requests. Initially, with a traditional linear FOIA approach, it was estimated that it would take approximately four years to complete. Deloitte augmented ICE's traditional workflow by introducing Relativity as a platform to de-duplicate documents, run analytics, categorize documents, and automatically push them out to specialized teams. After developing a foundational knowledge of ICE's document types, Deloitte deployed advanced searching, analytics, machine learning, and automated redactions, which significantly increased ICE's review and production throughput. Deloitte helped the agency achieve substantial efficiency and accuracy gains by tailoring technology capabilities to its existing technology and workflows. At maximum capacity, the team was able to redact up to 120,000 pages per week and deliver 3,750 completed requests per week. After stabilizing and reducing ICE's massive backlog, Deloitte sought to help ICE increase the efficiency and accuracy with which FOIA responses were reviewed, redacted, and produced to avoid similar situations in the future. A tool to manage the intake and delivery of requests was incorporated into the Relativity platform, enabling efficient

tracking, smooth transitions from request to response, and standardization for communications and reporting. The insight gained by working together with ICE to help them address responses to the largest collection of FOIA requests led to the creation of Deloitte's Disclosure Platform. The separate scripts and tools that were generated to address concerns and add efficiency for review, redaction, ingestion of data was integrated into the Disclosure Platform. Essentially, the technology, processes, and workflows created while assisting ICE were utilized and improved upon to build a customizable and comprehensive tool to tackle FOIA requests across government sectors.

We have additional qualifications that demonstrate our impact across FOIA support and specifically with diagnoses. Based on the specific needs of each effort, we can utilize our network of individuals with deep FOIA subject-matter knowledge, as well as strategic thinkers and innovators for fresh perspectives and technical knowledge.

Endnotes

1. As used in this document, "Deloitte" means Deloitte Financial Advisory Services LLP, which provides forensic, dispute, and other consulting services, and its affiliate, Deloitte Transactions and Business Analytics LLP, which provides a wide range of advisory and analytics services. Deloitte Transactions and Business Analytics LLP is not a certified public accounting firm. Please see www.deloitte.com/us/about for a detailed description of our legal structure. Certain services may not be available to attest clients under the rules and regulations of public accounting.

For more information:



Christopher Knox
Managing Director | Discovery
Deloitte Risk & Financial Advisory
Deloitte Transactions and Business
Analytics LLP
512.498.7411
csknox@deloitte.com



Sue Seeley
Senior Manager | Discovery
Deloitte Risk & Financial Advisory
Deloitte Transactions and Business
Analytics LLP
512.498.7411
csknox@deloitte.com

Authors

Deloitte Financial Advisory Services LLP

1919 North Lynn Street
Arlington, VA 22209

Deloitte.

This publication contains general information only and Deloitte is not, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

Deloitte shall not be responsible for any loss sustained by any person who relies on this publication.

As used in this document, "Deloitte" means Deloitte Financial Advisory Services LLP, which provides forensic, dispute, and other consulting services, and its affiliate, Deloitte Transactions and Business Analytics LLP, which provides a wide range of advisory and analytics services. Deloitte Transactions and Business Analytics LLP is not a certified public accounting firm. Please see www.deloitte.com/us/about for a detailed description of our legal structure. Certain services may not be available to attest clients under the rules and regulations of public accounting.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (DTTL), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. In the United States, Deloitte refers to one or more of the US member firms of DTTL, their related entities that operate using the "Deloitte" name in the United States and their respective affiliates. Certain services may not be available to attest clients under the rules and regulations of public accounting. Please see www.deloitte.com/about to learn more about our global network of member firms.