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AI Meets FOIA Law:

Legal Issues with the Use of Artificial Intelligence to Fulfill FOIA Requests

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Several federal agencies are piloting the use of artificial intelligence (AI) to fulfill federal Freedom of Information Act (FOIA) requests, both in finding documents and redacting non-disclosable information. As agencies develop AI systems for this purpose, they must also meet the established legal requirements for FOI searches and responses. This paper examines the legal requirements for processing of FOIA requests as determined by the statute, implementing regulations and guidance and court rulings. It also examines the nascent processes that are being piloted and/or proposed to use AI for FOIA processing and how they comport with the requirements. Based on this analysis, we propose protocols to ensure that the legal FOIA requirements are met by the use of AI to fulfill FOIA requests.

Recommendations

Compliance Category	Requirement Description	Documentation Objective	Operational Safeguard	Implementation Constraint
Search Adequacy	Agencies must demonstrate that the search was reasonably calculated to uncover all relevant documents beyond material doubt.	AI must record the method and scope of each search, including specific search terms and a list of all records systems searched.	Human monitoring and oversight are essential to ensure searches are consistent with FOIA mandates.	Systems must be able to clearly describe records storage, indexing, and categorization logic.
Redaction & Segregability	AI must identify and separate reasonably segregable portions of records for release after redacting exempt information.	AI must create a Vaughn index identifying each relevant FOIA exemption for every redacted portion or nondisclosed record.	AI must create a new copy for redaction rather than altering the original stored record.	Continuous training is required to incorporate new agency decisions, case law, and legislative histories.
Transparency & Auditing	AI processes must be traceable and allow for the identification and correction of errors to guarantee system accuracy.	AI must provide a narrative explanation proving search efforts were reasonable and logically organized.	Checking mechanisms must be established to allow human review of automated processes and ensure procedural integrity.	AI must recognize what judicial interpretations and the language of FOIA require.
Record Keeping	AI must maintain logical and accurate explanations of how determinations were made regarding record availability and relevance.	AI must develop a clear and accurate list of all records searched, including explanations for the number of records found and reasons for withholding.	Programming is necessary to ensure AI indicates how records are indexed, categorized, and located within specific agency systems.	AI must be trained to recognize what judicial interpretations and the language of FOIA require.

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