

U.S. Office of Special Counsel 2015 Chief FOIA Officer's Report

April 1, 2015

In accordance with U.S. Department of Justice (DOJ) guidelines, the Chief FOIA Officer for the U.S. Office of Special Counsel (OSC) hereby submits the 2015 Chief FOIA Officer's Report. OSC General Counsel **Lisa Terry** is the **Chief FOIA Officer**.

Section I: Steps Taken to Apply the Presumption of Openness

1. *Did your FOIA professionals or the personnel at your Agency who have FOIA responsibilities attend any FOIA training or conference, such as that provided by DOJ, during the reporting period? (This can include internal as well as external training).*

Yes.

2. *Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.*

Sixty percent of OSC's staff whose responsibilities include handling FOIA matters attended substantive FOIA training during the reporting period.

3. *In the 2014 Chief FOIA Officer Report Guidelines, OIP asked Agencies to provide a plan for ensuring that core, substantive training is offered to all Agency FOIA professionals at least once each year. Please provide the status of your Agency's implementation of this plan. Include any successes or challenges your Agency has seen in implementing your plan.*

The FOIA Team continued with the approach discussed in OSC's 2014 Chief FOIA Officer's Report. As discussed, the FOIA Team regularly reviews FOIA guidance published by the U.S. Department of Justice's (DOJ) Office of Information Policy (OIP). Team members also routinely seek, identify and attend substantive FOIA training sessions, such as those provided by DOJ/OIP and the American Society of Access Professionals (ASAP). Additionally, OSC has continued its informal "FOIA mentoring" and "on the job training" strategy, in which more experienced FOIA professionals provide guidance and training to members of the Team with less FOIA experience. OSC will continue this approach in FY 2015 and plans to expand this approach, since we added new Team members in the latter part of 2014. Some FOIA Team members have attended OIP FOIA training thus far (March 2015) and plan to attend other such training as it is offered.

4. *Does your Agency have a distinct process or system in place to review records for discretionary release? If so, please briefly describe this process. If your Agency's FOIA operation is decentralized, please specify whether all components of your Agency have such a process in place.*

As previously reported, OSC continues its practice of reviewing records for discretionary release as part of its standard review procedures. When a member of OSC's FOIA Team reviews material that the Team identifies as privileged, they first consider whether any of this material should be considered for discretionary release. The Team then discusses that potential for release with the appropriate (non-FOIA) program and legal staff. Given the nature of OSC's mission and the fact that a majority of requests involve case files which include investigative material and privacy-protected information, the opportunity for discretionary releases is limited. The review of FOIA appeals includes a similar process conducted by the appeals official. OSC's FOIA operation is centralized.

5. *During the reporting period, did your Agency make any discretionary releases of information?*

Yes.

6. *What exemption(s) would have covered the material released as a matter of discretion?*

FOIA Exemption 5; specifically, the Attorney Work-Product and Deliberative Process privileges.

7. *Provide a narrative description, as well as some specific examples, of the types of information that your Agency released as a matter of discretion during the reporting year.*

Examples include an E-Mail message from a deputy unit chief to the agency's deputy requesting approval for a certain action ((b)(5), deliberative); and Internet research (i.e., newspaper articles and legal opinions) collected in compiling a litigation strategy ((b)(5), deliberative and attorney work-product privileges).

8. *If your Agency was not able to make any discretionary releases of information, please explain why.*

N/A.

9. *If there are any other initiatives undertaken by your Agency to ensure that the presumption of openness is being applied, please describe them here. If any of these initiatives are on line, please provide links in your description.*

In recent years, OSC has included in its FOIA procedures steps to ensure that (non-FOIA) program staff is able to identify any articulable harm before withholding any privileged information. If no harm is identified and no other FOIA Exemptions require withholding, the information is released.

Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

1. *For Fiscal Year (FY) 2014, what was the average number of days your Agency reported for adjudicating requests for expedited processing? (Please see Section VIII.A. of your Agency's FY 2014 Annual FOIA Report). Please note here if your Agency did not adjudicate any requests for expedited processing during FY 2014.*

The average number of days reported for adjudicating requests for expedited processing was 72.5 days. Note that the median number of days to adjudicate was 8. The average number of days was exceedingly high in part because occasionally the need or desire for a request to be expedited is not expressed by the requester or identified by us upon receipt of the request.

2. *If your Agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your Agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days.*

OSC has recently added additional resources (one permanent staff member and one contractor) to its FOIA Team. Requests for expedited processing are now adjudicated during the request intake process, and are assigned to a processor promptly after adjudication. OSC is updating its FOIA-related Standard Operating Procedures (SOPs) to reflect this new step.

3. *Does your Agency notify requesters of the mediation services offered by the Office of Government Services (OGIS) at the National Archives and Records Administration?*

Yes; when providing responses to FOIA appeals.

4. *When assessing fees, does your Agency provide a breakdown of how FOIA fees were calculated and assessed to the FOIA requester? For example, does your Agency explain the amount of fees attributable to search, review and duplication?*

OSC does not typically charge fees due to the nature of most of our FOIA requests but, for the rare occasions we do, we provide such a breakdown. OSC did not charge any fees during this reporting period.

5. *If estimated fees are particularly high, does your Agency provide the requester with an explanation for the estimate?*

N/A.

6. *If there are any other steps your Agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc., please describe them here.*

Last year, OSC's FOIA Team undertook an extensive review of its FOIA SOPs, which resulted in our updating several procedures and assigning particular processing and program functions to particular Team members. This "review and update" system is ongoing. Also, during the reporting period, OSC acquired and put into use an electronic FOIA request processing system that has improved processing efficiency. Additionally, OSC has recently launched its Public Access Link as a way to more efficiently receive and process requests. This tool is also designed to help requesters understand OSC's mission and the FOIA process.

Section III: Steps Taken to Increase Proactive Disclosures

1. *Does your Agency have a distinct process or system in place to identify records for proactive disclosure? If so, please describe your Agency's process or system.*

Yes. While processing FOIA requests, FOIA Team members routinely consider whether records are appropriate for possible proactive disclosure. Additionally, OSC leadership regularly considers whether Agency material is suitable for proactive disclosure.

2. *Does your process or system involve any collaboration with Agency staff outside the FOIA office? If so, describe this interaction.*

Yes. In the course of processing FOIA requests, OSC's FOIA Team often consults with experts from the appropriate program areas within OSC to identify possible "foreseeable harm" that may result from release of requested records.

3. *Describe your Agency's process or system for identifying "frequently requested" records that should be posted online.*

When OSC receives a request that appears similar to one we have already received, the FOIA Team searches our tracking system for subjects that seem to come up repeatedly in FOIA requests.

4. *Provide examples of material that your Agency has proactively disclosed during the past reporting year, including links to the posted material.*

OSC has recently begun an initiative in response to commitments made in the White House's second Open Government National Action Plan and requests from federal agencies and non-profit organizations, to publish redacted versions of OSC's Prohibited Personnel Practices reports with broad educational value. OSC has also published amicus briefs we filed in 2014.

OSC is also required by statute (5 U.S.C. §1219) to post certain documents on its Web site.

5. *If there are any other steps your Agency has taken to increase proactive disclosures, please describe them here.*

OSC plans to proactively post our FOIA Logs on our Web site this year.

Making Material Posted Online More Useful

1. *Beyond posting new material, is your Agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your Agency's Web site? (Steps can include soliciting feedback on the content and presentation of posted material, improving search capabilities on your Agency Web site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.)*

Yes.

2. *If yes, please provide examples of such improvements. If your Agency is already posting material in its most useful format, please describe these efforts.*

Publicly posted materials are indexed on OSC's FOIA Web site.

3. *Has your Agency encountered challenges that make it difficult to post records you otherwise would like to post?*

Yes.

4. *If so, please briefly explain what those challenges are.*

Privacy concerns often present obstacles to publicly posting material.

Use of Technology to Facilitate Processing of Requests

- A. *Beyond using technology to redact documents, is your Agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents? If yes, describe the technological improvements being made.*

During the reporting period, OSC acquired and put into use an electronic FOIA request processing system that has improved processing efficiency. This system also tracks data on each request and, using that data, is able to generate our Annual FOIA Report. This has saved much time as compared to our previous method of preparing that report. Additionally, OSC has recently launched its Public Access Link as a way to more efficiently receive and process requests. This tool is also designed to help requesters understand OSC's mission and the FOIA process.

- B. *Are there additional tools that could be utilized by your Agency to create further efficiencies?*

The FOIA Team is assessing its need for any additional such tools.

Other Initiatives

5. *Did your Agency successfully post all four quarterly reports for FY 2014?*

Yes.

6. *If your Agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your Agency's plan for ensuring that such reporting is successful in FY 2015.*

N/A.

7. *Do your Agency's FOIA professionals use E-Mail or other electronic means to communicate with requesters whenever feasible? If yes, what are the different types of electronic means utilized by your Agency to communicate with requesters?*

OSC's FOIA Team utilizes E-Mail to communicate with requesters as often as is practicable. We also communicate with requesters through our electronic FOIA request processing system.

8. *If your Agency does not communicate electronically with requesters as a default, are there any limitations or restrictions for the use of such means? If yes, does your Agency inform requesters about such limitations?*

N/A.

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs

Simple Track:

1. *Does your Agency utilize a separate track for simple requests?*

Yes.

2. *If so, for your Agency overall in FY 2014, was the average number of days to process simple requests twenty working days or fewer?*

No.

3. *Please provide the percentage of requests processed by your Agency in FY 2014 that were placed in your Simple track.*

74%.

4. *If your Agency does not track simple requests separately, was the average number of days to process all non-expedited requests twenty working days or fewer?*

N/A.

Backlogs:

5. *If your Agency had a backlog of requests at the close of FY 2014, did that backlog decrease as compared with the backlog reported at the end of FY 2013? If not, explain why and describe the causes that contributed to your Agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:*

- *An increase in the number of incoming requests*
- *A loss of staff*
- *An increase in the complexity of the requests received*

The backlog did not decrease. Factors include having only one full-time FOIA processor for most of the reporting period, an increase in the number of requests received, a general increase in complexity of requests in recent years, FOIA litigation, the 3+-week furlough and conversion and migration of data to a new tracking system with which we are still becoming proficient.

6. *If you had a request backlog, please report the percentage of requests that make up the backlog out of the total number of requests received by your Agency in FY 2014.*

116%.

Backlogged Appeals:

7. *If your Agency had a backlog of appeals at the close of FY 2014, did that backlog decrease as compared with the backlog reported at the end of FY 2013? If not, explain why and describe the causes that contributed to your Agency not being able to reduce the backlog. When doing so, please also indicate if any of the following were contributing factors:*

- *An increase in the number of incoming appeals*
- *A loss of staff*
- *An increase in the complexity of the appeals received*

OSC did have a backlog of appeals at the close of FY 2014. The three aforementioned items were contributing factors, as well as the items mentioned in #5, above, under “**Backlogs**”.

8. *If you had an appeal backlog, please report the percentage of appeals that make up the backlog out of the total number of appeals received by your Agency in FY 2014.*

200%.

Status of Ten Oldest Requests, Appeals, and Consultations

9. *In FY 2014, did your Agency close the ten oldest requests that were reported pending in your FY 2013 Annual FOIA Report?*

No.

10. *If no, please provide the number of these requests your Agency was able to close by the end of the FY, as listed in Section VII.E of your FY 2014 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.*

Two requests.

11. *Of the requests your Agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did your Agency provide any interim responses prior to the withdrawal?*

None of these were withdrawn.

Ten Oldest Appeals

12. *In FY 2014, did your Agency close the ten oldest appeals that were reported pending in your FY 2013 Annual FOIA Report?*

No.

13. *If no, please provide the number of these appeals your Agency was able to close by the end of the FY, as listed in Section VII.C.(5) of your FY 2013 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that. For example, if you had only seven appeals listed as part of your “ten oldest” in Section VII.C.(5) and you closed six of them, you should note that you closed six out of seven “oldest” appeals.*

OSC did not close any of these appeals by the end of the FY.

Ten Oldest Consultations

14. *In FY 2014, did your Agency close the ten oldest consultations that were reported pending in your FY 2013 Annual FOIA Report?*

OSC did not have any consultations pending at the end of FY 2013.

15. *If no, please provide the number of those consultations your Agency was able to close by the end of the FY, as listed in Section XII.C. of your FY 2013 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that. For example, if you had only seven consultations listed as part of your “ten oldest” in Section XII.C. and you closed six of them, you should note that you closed six out of seven “oldest” consultations.*

N/A.

Additional Information on ten Oldest Requests, Appeals, Consultations and Plans

16. *Briefly explain any obstacles your Agency faced in closing its ten oldest requests, appeals and consultations from FY 2013.*

Factors include having only one full-time FOIA processor, an increase in the number of requests received, a general increase in complexity of requests in recent years, FOIA litigation, the 3+-week furlough and conversion and migration of data to a new tracking system with which we are still becoming proficient.

17. *If your Agency was unable to close any of its ten oldest requests because you were waiting to hear back from other Agencies on consultations you sent, please provide the date the request was initially received by your Agency, the date your Agency sent the consultation, and the date you last contacted the Agency where the consultation was pending.*

N/A.

18. *If your Agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your Agency intends to close those “ten oldest” requests, appeals and consultations during FY 2015.*

OSC’s Chief FOIA Officer has applied new resources to our oldest requests as part of an ongoing strategy toward backlog reduction.

Use of the FOIA’s Law Enforcement Exclusions

19. *Did your Agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during FY 2014? If so, please provide the total number of times exclusions were invoked.*

OSC did not invoke any statutory exclusions in FY 2014.

Success Stories

OSC’s FOIA requesters can now submit and track the status of their requests on-line via a Public Access Link (PAL) in conjunction with the electronic FOIA processing system we recently converted to.