

2020 CHIEF FOIA OFFICER REPORT
to the
Office of Information Policy

U.S. Office of Special Counsel



**U.S. Office of Special Counsel
2020 Chief FOIA Officer Report
Mahala Dar, Clerk**

Section 1: Steps Taken to Apply the Presumption of Openness

A. FOIA Leadership

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. Is your agency's Chief FOIA Officer at or above this level?

Yes, the U.S. Office Special Counsel's (OSC) Chief FOIA Officer is at this level.

2. Please provide the name and title of your agency's Chief FOIA Officer.

Mahala Dar, Clerk (Supervisory Attorney-Advisor)

B. FOIA Training

3. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any substantive FOIA training or conference during the reporting period such as that provided by the Department of Justice?

Yes, the FOIA professionals at OSC did attend FOIA training for Fiscal Year 2019 (FY 2019).

4. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

OSC's FOIA professionals attended the following trainings:

- **OIP's Continuing Freedom of Information Act Seminar in April 2019, which covered Advanced Litigation Considerations and FOIA Case Law Developments.**
- **OIP's Introduction to the FOIA seminar in June 2019, which covered FOIA Procedural Requirements, FOIA Exemptions Overview. FOIA Accountability/Resources, and FOIA requests start to finish.**
- **American Society of Access Professionals (ASAP) 12th National Training Conference in July 2019, which covered Privacy Act, FOIA Procedural Overview, Redaction Workshop, and Foreseeable Harm**
- **Summer 2019 Increasing Personal Effectiveness, which covered tools for day-to-day interactions that employees can use to create and sustain personal effectiveness that enables employees to identify improvement opportunities**

and develop new proficiencies to become more effective personally and professionally.

- **OSC’s Overview of FOIA, Privacy, and Records Management Training in October 2019, which covered OSC’s FOIA, Privacy, and Records policies; transitioning to electronic record keeping, and risk implications under the Privacy Act.**
- **Fall 2019 Federal Privacy Boot Camp, which covered the Privacy Act, Privacy Breaches, Privacy Impact Assessments (PIAs), and Reporting requirements.**
- **Fall 2019 Unified Agenda Training, which covered information collections under the Paperwork Reduction Act and System of Records Notices (SORNs).**

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

100% of OSC’s FOIA professionals and staff have attended FOIA training.

6. OIP has directed agencies to “take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year.” If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency’s plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

Not applicable.

C. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency’s FOIA administration.

Yes, OSC’s FOIA professionals attended Constitution Day in order to discuss and address First Amendment and timely free speech issues that are in the news, including but not limited to, information pertaining to records requests. This has led to improvements in OSC’s FOIA administration because it enabled OSC to narrow the scope of searches for records as it pertains to numerous requests asking for similar records (i.e. Kellyanne Conway).

Furthermore, OSC’s FOIA Office is centralized and the FOIA Officer engages with requesters to advise them of OSC’s FOIA process.

D. Other Initiatives

8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA.

OSC advises non-FOIA professionals of their obligations under the FOIA during the onboarding process for new employees. Employees are given a sheet summarizing their responsibilities under the FOIA, Privacy Act, Records Management and CUI.

In order to develop standardized training, OSC has requested OIP's training module CDs to upload into OSC's eLearning training system.

9. Optional -- If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

In order to ensure that that the presumption of openness is being applied, after completing a search for records, OSC's FOIA professional(s) seek release recommendations from program offices. We require for program offices to articulate foreseeable harms if the information is released and balance that with the public's interest.

Furthermore, OSC has a YouTube channel where it discusses how OSC handles complaints to inform the public of its process at https://www.youtube.com/channel/UCbOqIa1xgmWav85400_BwdQ.

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

1. For Fiscal Year 2019, 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 Fiscal Year 2019 Annual FOIA Report.

19.79 days.

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 or less.

In FY 2017, it took 31.23 days to adjudicate expedite requests. We improved that number to 15.11 days in FY 2018 because OSC hired more staff; however, due to high turnover in FY 2019, that average increased to 19.79 days.

To ensure that requests for expedited processing are adjudicated within ten (10) calendar days or less, we will enter the completed date for each request in FOIA Xpress in a timely manner.

3. During the reporting period, did your agency conduct a self-assessment of its FOIA program? If so, please describe the methods used, such as reviewing Annual Report data, using active workflows and track management, reviewing and updating processing procedures, etc.

Note: In September 2017, OIP released a FOIA Self-Assessment Toolkit as a resource for agencies conducting a self-assessment of their FOIA program. The Toolkit is available on OIP's website for all agencies to use.

No, OSC did not conduct a self-assessment of its FOIA program in FY 2019 because an assessment was conducted in FY 2018 and there has been a high turnover in FY 2019. We will conduct an assessment for FY 2020.

OIP's FOIA Self-Assessment Toolkit was introduced to OSC's FOIA team in December of 2018 as a measure to evaluate employee performance, such as mid-year reviews. The use of the toolkit as a scoring rubric is being utilized.

4. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2019 (please provide a total number or an estimate of the number).

Currently, OSC's Chief FOIA Officer is the acting FOIA Public Liaison (FPL). Communications with requesters are maintained in a separate Microsoft Outlook folder. Requesters sought assistance 115 times for FY 2019.

5. Please describe the best practices used to ensure that your FOIA system operates efficiently and effectively and any challenges your agency faces in this area.

Not applicable.

Section III: Steps Taken to Increase Proactive Disclosures

1. Provide examples of material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. (a)(2)(D). Please include links to these materials as well.

OSC is an independent federal agency that protects whistleblowers and, as such, a majority of our FOIA requests are first party requests and are not proactively disclosed. For this fiscal year, we did proactively disclose Comey records at <https://osc.gov/Pages/FOIA-ReadingRoom.aspx>. Furthermore, we have public files that are posted for the public at <https://osc.gov/PublicFiles>. In addition, federal register notices and various reports are published at

<https://osc.gov/Pages/FederalRegister.aspx>. Resources for prohibited personnel practices are located at <https://osc.gov/Services/Pages/PPP.aspx> and FOIA reports are located at <https://osc.gov/Pages/FOIA-Reports.aspx#tabGroup01>. We also publish federal advisory opinions at <https://osc.gov/Services/Pages/HatchAct-AdvisoryOpinion.aspx>.

2. 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 website?

Yes.

3. If yes, please provide examples of such improvements.

OSC re-designed its website and it launched in October 2019.

4. Optional -- Please describe:

- Best practices used to improve proactive disclosures
- Any challenges your agency faces in this area.

Not applicable.

Section IV: Steps Taken to Greater Utilize Technology

1. Is your agency leveraging or exploring any new technology to facilitate efficiency in its FOIA administration that you have not previously reported. If so, describe the type of technology.

Yes. Currently, OSC is looking to purchase an e-Discovery tool to locate electronic records. Various vendors came to OSC to provide demos on their products and services. In the alternative, we are exploring options to enhance our Microsoft licenses.

2. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources, and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

OSC re-designed its website and it launched in October 2019; specifically, OSC's FOIA page entails resources linked to the Department of Justice and OSC's updated FOIA contact information.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2019?

Yes, please visit <https://osc.gov/Pages/FOIA-Reports.aspx> for more information.

4. 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 Fiscal Year 2019.

Not applicable.

5. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2018 Annual FOIA Report and, if available, for your agency's Fiscal Year 2019 Annual FOIA Report.

<https://osc.gov/Pages/FOIA-Reports.aspx>.

6. Optional -- Please describe:

- Best practices used in greater utilizing technology
- Any challenges your agency faces in this area

Not applicable.

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

A. Simple Track

Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

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

Yes.

2. If your agency uses a separate track for simple requests, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2019?

No.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2019 that were placed in your simple track.

Approximately 38.8%.

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?

Not applicable.

B. Backlogs

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2018 and Fiscal Year 2019 when completing this section of your Chief FOIA Officer Report.

BACKLOGGED REQUESTS

5. If your agency had a backlog of requests at the close of Fiscal Year 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?

Yes, the backlog decreased.

6. If not, did your agency process more requests during Fiscal Year 2019 than it did during Fiscal Year 2017?

Not applicable.

7. If your agency's request backlog increased during Fiscal Year 2019, please 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:

Not applicable.

8. 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 Fiscal Year 2019. If your agency has no request backlog, please answer with "N/A."

45.64%.

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2019, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2018?

Appeals backlog has been constant at zero (0).

10. If not, did your agency process more appeals during Fiscal Year 2019 than it did during Fiscal Year 2018?

Not applicable.

11. If your agency's appeal backlog increased during Fiscal Year 2019, please 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:

Not applicable.

12. 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 Fiscal Year 2019. If your agency did not receive any appeals in Fiscal Year 2019 and/or has no appeal backlog, please answer with "N/A."

Not applicable.

C. Backlog Reduction Plans

13. In the 2019 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2018 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2019?

Not applicable.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2019, what is your agency's plan to reduce this backlog during Fiscal Year 2020?

Not applicable.

D. Status of Oldest Requests, Appeals, and Consultations

Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2018 and Fiscal Year 2019 when completing this section of your Chief FOIA Officer Report.

OLDEST REQUESTS

15. In Fiscal Year 2019, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

Yes.

16. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2019 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

Not applicable.

17. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

Not applicable.

TEN OLDEST APPEALS

18. In Fiscal Year 2019, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

Yes.

19. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2019 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

Not applicable.

20. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

Not applicable.

TEN OLDEST CONSULTATIONS

21. In Fiscal Year 2019, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2018 Annual FOIA Report?

Not applicable.

22. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2019 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

Not applicable.

E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2019.

OSC's present obstacles with closing its oldest requests, appeals, and consultations are the following: (1) voluminous records with over 15,000 pages to review, (2) FOIA litigation, and (3) turnover with contractors.

24. 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 when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

Not applicable.

25. 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 Fiscal Year 2019.

OSC posts its ten oldest cases in the Chief FOIA Officer’s office. The FOIA Officer has weekly meetings with the FOIA professional assigned the request and creates a plan for closure with deadline dates for each request.

F. Success Stories

Out of all the activities undertaken by your agency since March 2019 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency’s efforts. The success story can come from any one of the five key areas. As noted above, OIP will highlight these agency success stories during Sunshine Week. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

For Fiscal Year 2019, OSC’s FOIA backlog decreased by 39% from Fiscal Year 2018.