

2021 CHIEF FOIA OFFICER REPORT  
to the  
Office of Information Policy

**U.S. Office of Special Counsel**



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2021 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. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. *See* 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

**OSC's FOIA staff are enrolled to receive automatic updates from Eventbrite for upcoming trainings provided by Office of Information Policy (OIP). Also, when a team member receives a training opportunity, they obtain permission from OSC's Clerk in order to share the information with the team.**

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

**Yes, the FOIA professionals at OSC attended FOIA training for Fiscal Year (FY) 2020.**

5. 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 online trainings:**

- Virtual Exemption 7 Workshop
- Best Practices Workshop on Technology in FOIA
- Advanced FOIA Seminar
- DOJ Sunshine Week Kickoff Event
- Fees and Fee Waivers Workshop

6. Please 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 attended FOIA training.**

7. 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**

8. 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 a Food for Thought Seminar hosted by the American Society of Access Professionals (ASAP). It was interaction with the requester community. A wealth of knowledge was shared from the federal government and the requester community to address challenges, such as tools and tips for ensuring the adequacy of searches. ASAP's FOIA community dialogue led to improvements in OSC's FOIA administration because the search process is now streamlined for more efficiency and quality control.**

### **D. Other Initiatives**

9. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff.

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

**In FY 2020, OSC launched its first electronic records management training for the entire agency. This training enables employees to have a better understanding of how to manage its records, which helps with the FOIA office in its search for records.**

10. 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.

**OSC has public files available on its website at <https://osc.gov/PublicFiles>. These public files are from investigative case files that cannot be generally released under the FOIA.**

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

1. For Fiscal Year 2020, 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 2020 Annual FOIA Report.

**2.9 days.**

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2020 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

**Not applicable.**

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.

**OIP's FOIA Self-Assessment Toolkit is partially used to measure and evaluate employee performance, such as mid-year reviews; however, due to turnover, OSC has not conducted a self-assessment of its FOIA Program in FY 2020.**

4. Standard Operating Procedures (SOPs): Having SOPs can improve the consistency and quality of an agency's FOIA process. In addition, describing an agency's standard practices for handling FOIA requests on agency FOIA websites can help requesters better understand how their request will be handled.
- a) Does your agency have SOPs that outline general processes for handling FOIA requests appeals? **No.**
  - b) If not, does your agency have plans to create FOIA SOPs? **Yes.**
  - c) If yes, how often are they reviewed/updated to account for changes in law, best practices, and technology? **Yearly.**
  - d) In addition to having SOPs, does your agency post or otherwise describe your standard

processes for handling requests on your website? **Yes** (<https://osc.gov/Pages/FOIA-Handbook.aspx>)

5. 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 2020 (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 135 times for FY 2020.**

6. Does your agency frequently receive common categories of first-party requests? If so, please describe the types of requests and if your agency has explored establishing alternative means of access to these records outside of the FOIA process?

**A majority of OSC's requests are first-party requests (i.e.. individuals requesting copies of their investigations). There are exceptions, however, where certain types of investigations are available to the public online. Alternatively, these investigation are available online outside the FOIA process at <https://osc.gov/PublicFiles>.**

7. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. Has your agency updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations?

**Yes, OSC updated its FOIA regulations in 2017 (<https://www.govinfo.gov/content/pkg/FR-2017-03-30/pdf/2017-06047.pdf>). Currently, OSC is in the process of updating its FOIA/Privacy regulations in FY 2021 or FY 2022.**

8. Please explain how your agency worked to mitigate the impact of the COVID-19 pandemic on FOIA processing. Examples could include, but are not limited: altering workflows, implementing new technology, providing notices and instructions or otherwise communicating directly with requesters.

- **Mandatory full-time telework**
- **Transitioning to all electronic record keeping for case investigations**
- **Monthly status updates to requesters**
- **Evacuation leave**
- **Return to Worksite (HQ) Plan**
- **OSC Reconstitution Plan**

9. Optional – Please describe:

- Best practices used to ensure that your FOIA system operates efficiently and effectively
- Any challenges your agency faces in this area

**OSC utilizes the FOIA Xpress (FX) case management system to process its FOIA requests. The best practices used to ensure that OSC's FOIA system operates efficiently and effectively is to ensure OSC's SSL certificate from a Certification Authority (CA) does not expire. OSC also works extra hours, if needed, in order to facilitate FX's New Data Center Moves and Testing. Lastly, OSC keeps the lines of communications open to install any new updates to the system.**

### **Section III: Steps Taken to Increase Proactive Disclosures**

1. Provide examples of any 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. § 552(a)(2)(D). Please include links to these materials as well.

**Most of OSC's requests are first-party requests and those records are not appropriate for proactive disclosure. For FY 2020, we did not have any frequently requested records or other records required to be posted.**

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. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

**OSC's newly designed website provides access to content and records in an open, machine-readable, and machine-actionable formats. If there are any challenges, OSC's Information Technology (IT) team collaborates with the Clerk's Office to resolve them.**

4. Optional – Please describe:

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

**OSC needs a strategic and systematic method to identify frequently**

requested records. To do this, we need to run reports and consider whether responsive records are a popular topic that is likely to become the subject of subsequent requests in the future. Once frequently requested records are identified, OSC will regularly update its FOIA Library to contain all frequently requested records or records that OSC anticipates will be requested three or more times.

#### **Section IV: Steps Taken to Greater Utilize Technology**

1. Please briefly describe the types of technology your agency uses to support your FOIA program. In addition, please highlight if your agency is leveraging or exploring any new technology that you have not previously reported. If so, please describe the type of technology.

**OSC launched an electronic case management system named eCMS in August 2019. Effective February 1, 2021, OSC transitioned from paper to electronic record keeping as OSC's official record. eCMS will support OSC's FOIA Program tremendously because the search for records will take less time.**

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's main homepage has a link to its FOIA program at <https://osc.gov>. Once a member of the public clicks the FOIA link on OSC's homepage, s/he will arrive at OSC's FOIA page and it entails where members of the public can submit their request online. This page also contains OSC's FOIA Handbook, Reading Room, Annual/Quarterly Reports, and additional resources. Due to COVID-19, OSC updated its website to inform the public that it no longer accepts paper filings (<https://osc.gov/Pages/File-Complaint.aspx>).**

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2020?

**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 2021. 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 2019 Annual FOIA Report and, if available, for your agency's Fiscal Year 2020 Annual FOIA Report.

<https://osc.gov/Pages/FOIA-Resources.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, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2020?

**No.**

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2020 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) *divided by* (requests processed from Section V.A.) x 100.

**Approximately 34.19%.**

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 2019 and Fiscal Year 2020 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 2020, according to Annual FOIA Report Section XII.A, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

**Yes, the backlog decreased.**

6. If not, according to Annual FOIA Report Section V.A, did your agency process more requests during Fiscal Year 2020 than it did during Fiscal Year 2019?

**Not applicable.**

7. If your agency's request backlog increased during Fiscal Year 2020, 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:

- An increase in the number of incoming requests.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

**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 2020. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) *divided by* (requests received from Section V.A) x 100. If your agency has no request backlog, please answer with "N/A."

**9.72%.**

### **BACKLOGGED APPEALS**

9. If your agency had a backlog of appeals at the close of Fiscal Year 2020, according to Section XII.A of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2019?

**Not applicable.**

10. If not, according to section VI.A of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2020 than it did during Fiscal Year 2019?

**Not applicable.**

11. If your agency's appeal backlog increased during Fiscal Year 2020, 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:

- An increase in the number of incoming appeals.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Any other reasons – please briefly describe or provide examples when possible.

**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 2020. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) *divided by* (appeals received from Section VI.A) x 100. If your agency did not receive any appeals in Fiscal Year 2020 and/or has no appeal backlog, please answer with "N/A."

**Not applicable.**

### **C. Backlog Reduction Plans**

13. In the 2020 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2019 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 2020?

**Not applicable.**

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2020, please explain your agency's plan to reduce this backlog during Fiscal Year 2021.

**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 2019 and Fiscal Year 2020 when completing this section of your Chief FOIA Officer Report.

### **OLDEST REQUESTS**

15. In Fiscal Year 2020, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2019 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 requests, please describe any steps your agency took to reduce the overall age of your pending requests.

**Properly using FX to stop the clock on FOIA requests has helped reduced the overall age of OSC's pending requests.**

### **TEN OLDEST APPEALS**

18. In Fiscal Year 2020, did your agency close the ten oldest appeals that were reported pending in Section VII.C.5. of your Fiscal Year 2019 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 2020, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2019 Annual FOIA Report?

**Yes.**

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.

**Due to COVID-19, employees are allowed to use 10 hours of paid evacuation leave per week; as such, employees are working less hours and still have to process requests within twenty (20) business days.**

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 2021.

**OSC’s Chief FOIA Officer has bi-weekly workload meetings with its team to ensure they are on-target with closing its oldest requests.**

#### **F. Success Stories**

Out of all the activities undertaken by your agency since March 2020 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, but should not be something that you have reported in a prior year. 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 FY 2020, OSCs FOIA backlog decrease by 54% from FY 2019. While COVID-19 affected some of our operations, the Clerk’s Office launched OSC’s first agency wide records management training. In addition, all of OSC’s case investigations will be processed electronically and the electronic file will serve as OSC’s official record.**