

2022 CHIEF FOIA OFFICER REPORT  
to the  
Office of Information Policy

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



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2022 Chief FOIA Officer Report  
Mahala Vixamar, 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 Vixamar, 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) 2021.**

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 trainings:**

- Virtual Exemption 7 Workshop
- Best Practices Workshop on Technology in FOIA
- Advanced FOIA Seminar
- Artificial Intelligence for FOIA Professionals

- Virtual Procedural Requirements and Fees Workshop
- Electronic Case Files Mandatory Training
- Virtual Litigation Workshop
- Friend or FOIA: AI and the Freedom of Information Act.
- FOIA Intake Training
- FOIA Intake Training Part II
- FOIA Inbox Training
- FOIA Search Training
- FOIAXpress (FX) Training
- 2021 AINS User Conference (FX and eCASE)
- Virtual Introduction to FOIA
- Virtual Procedural Requirements and Fees Workshop
- Virtual Privacy Considerations Workshop
- Continuing FOIA Education Training
- AINS User Conference FOIA Day
- FOIA Tech Showcase Follow Up Workshop
- DOJ's OIP FOIA Litigation Workshop
- DOJ's OIP Privacy Considerations
- DOJ's Virtual Privacy Considerations Workshop
- Controlled Unclassified Information

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.**

8. Did the personnel at your agency who have FOIA responsibilities attend training in federal records management during this reporting period?

**Yes. OSC's Chief FOIA Officer also serve as OSC's Senior Agency Official for Records Management (SAORM). For FY 2021, OSC launched its first virtual annual records training. All OSC employees are required to attend the annual records training as it transitioned to paperless environment.**

### **C. Outreach**

9. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard

request process, 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.

**Due to the global COVID-19 pandemic, OSC transitioned to full electronic record keeping on February 1, 2021. As such, OSC's website was modified to let the public know that it will no longer accept paper filings. This is a major improvement because it creates a less tedious and burdensome search process since we will no longer have to look for paper records and/or files.**

**OSC completed its federal regulations for FOIA and the public provided various comments on the FOIA process, which are currently being reviewed.**

#### **D. Other Initiatives**

10. 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; and

**OSC's website advised the public that OSC will no longer accept paper records. Furthermore, 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.**

if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations and expectations during the FOIA process?

**OSC has monthly Senior Staff meetings where the Chief FOIA Officer has advised senior leaders that government records are subject to the FOIA. Senior Management was advised to retain records according to OSC's records schedule. Since government records are potentially searchable under the FOIA, embarrassment is not a reason not to disclose a record. Only FOIA exemptions are legal justifications to withhold information in full or in part.**

11. 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 2021, 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 2021 Annual FOIA Report.

**Ten (10) 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. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. In 2016, OIP issued Guidance for Agency FOIA Regulations and the accompanying Template for Agency FOIA Regulations to assist agencies in updating their regulations in accordance with the statute. 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 has updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016 on February 1, 2022. The commenting period has closed and OSC are reviewing the public comment. The proposed FOIA regulations are located at <https://www.govinfo.gov/content/pkg/FR-2022-02-01/pdf/2022-01560.pdf>.**

4. Standard Operating Procedures (SOPs) generally document your agency's internal processes for administering the FOIA beyond your FOIA regulations and FOIA Reference Guide. As noted in OIP's guidance, having SOPs can improve the consistency and quality of an agency's FOIA process. SOPs can also serve as a significant resource for incoming FOIA professionals and a way to preserve much of the agency's institutional knowledge on administering the FOIA from how to handle requests from start-to-finish, to identifying and making proactive disclosures, to maintaining a FOIA website. Does your agency have up-to-date internal SOPs for your FOIA administration?

**Partly. We have step-by-step guidelines on processing FOIAs. We have drafted an internal SOP that is currently being reviewed and finalized.**

- 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. If not, please provide a timeline for when your agency plans to develop or update its SOPs.

**OSC plans to develop its SOPs by the end of the fiscal year in 2023.**

6. Has your agency established alternative means of access to first-party requested records outside of the FOIA process?

**Yes, first-party requesters can request records while their investigations are open.**

7. If yes, please provide examples. If no, please explain if such opportunities exist at your agency and whether there are any challenges in establishing alternative means of access.

**OSC's Directive 53 permits first party-requests to obtain records in his/her investigation that is still open. OSC provides records that were sent by the first-party requester and OSC letter correspondence.**

8. Did your agency conduct a self-assessment of its FOIA administration during the reporting period? If so, please describe the self-assessment methods used, such as analyzing Annual Report or raw data, using active workflows and track management, reviewing and updating processing procedures, etc. In addition, please specifically highlight any data analysis methods or technologies used to assess your agency's FOIA program.

**No.**

9. 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 2021 (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 157 times for FY 2021.**

10. Has your agency reviewed its FOIA-related staffing capabilities to identify resources needed to respond to current and anticipated FOIA demands?

**OSC is in the process of re-structuring its FOIA program again due to its de minimus FOIA backlog.**

11. Optional – Please describe:

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

**Not applicable.**

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

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

**OSC's Chief FOIA Officer has monthly ticklers on its calendar to go print reports from FOIAXpress and post proactive disclosures.**

2. 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 2021, we did not have any frequently requested records to be posted.**

3. Does your agency disseminate common types of material outside of FOIA, including in online databases where the public may access them? If yes, please provide examples and, if applicable, statutory authority.

**Yes, pursuant to 5 U.S.C. §1213, OSC release case investigations to the public.**

4. 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.**

5. 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.**

6. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office? If so, describe this interaction.

**No.**

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. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

**Yes.**

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

**Not applicable.**

3. 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 updated its website to inform the public that it no longer accepts paper filings (<https://osc.gov/Pages/File-Complaint.aspx>).**

4. Did all four of your agency's quarterly reports for Fiscal Year 2021 appear on your agency's website and on FOIA.gov?

**Yes.**

5. 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 2022.

**Not applicable.**

6. 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 2020 Annual FOIA Report and, if available, for your agency's Fiscal Year 2021 Annual FOIA Report.

**<https://osc.gov/Pages/FOIA-Reports.aspx#tabGroup01>.**

7. 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 2021?

**No.**

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2021 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 47.93%.**

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**

When answering these questions, please refer to you Fiscal Year 2021 Annual FOIA Report, Sections XII.D-E, which compare the numbers of requests and appeals received, processed, and backlogged between Fiscal Years 2020 and 2021.

### **BACKLOGGED REQUESTS**

5. If your agency had a backlog of requests at the close of Fiscal Year 2021, according to Annual

FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2020?

**Yes, the backlog decreased.**

6. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2021 than it did during Fiscal Year 2020?

**Not applicable.**

7. If your agency's request backlog increased during Fiscal Year 2021, 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.
- Impact of COVID-19 and workplace and safety precautions
- 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 2021. 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. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

**2.96%.**

## **BACKLOGGED APPEALS**

9. If your agency had a backlog of appeals at the close of Fiscal Year 2021, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2020?

**Not applicable.**

10. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2021 than it did during Fiscal Year 2020?

**Not applicable.**

11. If your agency's appeal backlog increased during Fiscal Year 2021, 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.
- Impact of COVID-19 and workplace and safety precautions.
- 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 2021. 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. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2021 and/or has no appeal backlog, please answer with "N/A."

**Not applicable.**

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

13. In the 2021 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2020 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 2021?

**Not applicable.**

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2021, please explain your agency's plan to reduce this backlog during Fiscal Year 2022. In particular, please also detail how your agency developed and plans to execute your backlog reduction plans.

**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 2020 and Fiscal Year 2021 when completing this section of your Chief FOIA Officer Report.

## **OLDEST REQUESTS**

15. In Fiscal Year 2021, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2020 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 2020 Annual FOIA Report. If you had less 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.

**Reducing the overall backlog to a de minimus number helps reduce the overall age of your pending requests.**

## **TEN OLDEST APPEALS**

18. In Fiscal Year 2021, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2020 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 VI.C.(5) of your Fiscal Year 2020 Annual FOIA Report. If you had less 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 2021, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2020 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 2020.

**Not applicable.**

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 2022.

**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 2021 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, these agency success stories will be highlighted during Sunshine Week by OIP. 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 2021, OSCs FOIA backlog has decreased by 30% from FY 2020. During the COVID-19 pandemic, OSC’s Chief FOIA Officer, who also serves as OSC’s Senior Agency Official for Records Management, was able to transition to electronic records for the entire agency. As a paperless agency, OSC is able to process FOIA requests in a more efficient manner. Furthermore, OSC’s Chief FOIA Officer serves as OSC’s Senior Agency Official for Privacy (SAOP). As the SAOP, OSC is in the process updating its FOIA/Privacy regulations, which have not been updated since 2007.**