

2019 CHIEF FOIA OFFICER REPORT
to the
Office of Information Policy

U.S. Office of Special Counsel



**U.S. Office of Special Counsel
2019 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. Please be advised that OSC is a small agency that employs approximately 200 employees. In 2017, OSC created the Clerk's Office in order to manage its FOIA regulatory compliance.

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 2018 (FY 2018).

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 an in-house FOIA Xpress training presented by AINS in June 2018. This was critical because it allowed all FOIA staff members to utilize one platform to process FOIA requests. In October of 2018, our FOIA team attended the FOIA Tech Summit, which provided insight on integration between the public access link (FOIA Xpress PAL) and the FOIA National Portal.

In addition, OSC's staff attended DOJ OIP's FOIA Litigation Seminar in November 2018, which assisted OSC with its present FOIA litigation matters. Our team also attended a seminar on Reasonable Searches in December 2018 hosted by the American Society of Access Professionals.

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 a Food for Thought Seminar hosted by the American Society of Access Professionals. 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.

This has led to improvements in OSC's FOIA administration because the search process is now streamlined for more efficiency and quality control. Searches begin by filling out a form and submitted to the Office of General Counsel (OGC) for approval. Once the search is approved, it is submitted to the responsible program office to search for records.

D. Other Initiatives

8. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In 2016, the Department publicized FOIA-related performance standards for employees that have any role in administering the FOIA, including non-FOIA professionals. Please also indicate whether your agency has considered including FOIA-related performance standards in employee work plans for employees who have any role in administering the FOIA.

OSC advises non-FOIA professionals of their obligations under the FOIA during the onboarding process for new employees. During orientation, the Clerk's Office has a section to give a presentation. Employees are also given a sheet summarizing their responsibilities under the FOIA, Privacy Act, Records Management and CUI.

In order to develop standardized metrics to monitor efficiency, OIP's FOIA Assessment Toolkit is utilized to measure employee performance. Presently, the toolkit is the measure for mid-year and/or annual reviews; however, the goal is to utilize this metrics on a quarterly basis.

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.

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.

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

1. For Fiscal Year 2018, 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 2018 Annual FOIA Report.

15.11 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 because OSC hired more staff; in addition, the FOIA process is streamlined by having a FOIA professional make an expedite determination and send an interim release of records to the requester (if the requester has an upcoming court hearing).

To ensure that requests for expedited processing are adjudicated within ten (10) calendar days or less, we will attempt to narrow the scope with the requester within 1-2 days that way the search for records can be completed within 5-7 business days. Furthermore, we can try to allocate one FOIA professional to review all expedited requests.

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.

Yes, OSC did conduct a self-assessment of its FOIA program. In June 2018, the Chief FOIA Officer interviewed all of its FOIA professionals to understand why the FOIA backlog existed. In order to reduce the backlog and streamline the FOIA process, OSC created a FOIA Backlog Reduction Flowchart, which entails separate teams for intake, initial reviews, and final reviews before a request is submitted to the Chief FOIA Officer for release determination and closure. Each team has separate responsibilities so that no one individual processes a request from start to finish. Furthermore, we have bi-weekly roundtable discussions on how to improve our processes, which will be utilized to create a Standard Operating Procedure. Lastly, all FOIA professionals utilize FOIA Xpress as a single platform to process all FOIAs. These implemented improvements drastically reduced the FOIA backlog.

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.

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 2018 (please provide a total number or an estimate of the number).

Currently, OSC's Chief FOIA Officer is the acting FOIA Public Liaison (FPL) (we are hoping to hire a FPL by the end of FY 2019). Communications with requesters are maintained in a separate Microsoft Outlook folder. Requesters sought assistance 82 times for FY 2018.

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.

OSC utilizes the FOIA Xpress 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 keep in touch with AINS team (AINS is the FOIA technical support staff for FOIA Xpress). Tickets are submitted immediately when we have a problem. We follow-up to ensure problems are resolved in a timely manner.

The challenge we face in this area is waiting for AINS to fix the problems and ensuring that OSC's Chief Information Officer (CIO) is available to coordinate with AINS. Syncing schedules can take time, which can delay our FOIA processing times. Currently, we are facing

a dilemma of communicating with requesters via Microsoft Outlook instead of FOIA Xpress; however, AINS is working on this technical issue.

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 links to the posted material.

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. We do, however, have public files that are posted for the public at <https://osc.gov/Pages/Resources-PublicFiles.aspx>. In addition, federal register notices and various reports are published at <https://osc.gov/Pages/Resources-ReportsAndInfo.aspx>. Resources for prohibited personnel practices are located at <https://osc.gov/Pages/ppp-resources.aspx> and FOIA reports are located at <https://osc.gov/Pages/FOIA-Resources.aspx>. We also publish federal advisory opinions at <https://osc.gov/Pages/Advisory-Opinions.aspx>.

2. Please describe how your agency identifies records that have been requested and released three or more times (and are therefore required to be proactively disclosed pursuant to 5 U.S.C. § 552(a)(2)(D)).

Presently, OSC has frequent requesters that request different types of information; however, we have not established a method to identify frequently requested records. Once OSC hires a FPL, s/he will have a better knowledge of our frequently requested records. In the interim, we plan to run a report and analyze our FOIA logs for the past three (3) years to determine frequently requested records.

3. 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.

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

OSC is in the process of re-designing its website. In addition, we conduct surveys to receive feedback from the public and engage with the media, which has information located at <https://osc.gov/pages/media.aspx>.

5. Please describe the best practices used to improve proactive disclosures and 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. Is your agency leveraging technology to facilitate efficiency in conducting searches, including searches for emails? If so, please describe the type of technology used. If not, please explain why and please describe the typical search process used instead.

In order to conduct FOIA searches, the intake team contacts the requester for clarification and/or to narrow the scope of the request. After communicating with the requester, a form is submitted to the Office of General Counsel (OGC) for approval. OGC reviews the form for accurate search terms and where to find records within OSC. The intake team then submits the approved search form to the appropriate program office(s) to search for responsive records. Depending on the program office, it searches its own system for responsive records. These systems include efile and OSC 2000. In addition, the intake team performs a cursory search for records in its Microsoft Platform service, which is SharePoint.

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?

Senior officials at OSC are diligently working with the Chief Information Officer to re-design its website. Specifically, we have entered a contract for the re-design and we anticipate this to be done by FY 2020; however, in addition to its FOIA Library/Electronic Reading Room, we have a diverse spectrum of information that is available online to the public (see response to Section III.1). We also use social media to disseminate information on trending topics about OSC and issues that interest the public, which is available at https://twitter.com/US_OSC.

3. Did your agency successfully post all four quarterly reports for Fiscal Year 2018?

Yes, please visit <https://osc.gov/Pages/FOIA-Resources.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 2017 Annual FOIA Report and, if available, for your agency's Fiscal Year 2018 Annual FOIA Report.

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

6. Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

The best practices used are delegating tasks and making use of a uniform system for processing. In addition, we collaborate with our CIO and Chief Information Security Officer (CISO) to ensure we are implementing the Open Data Policy and Digital Government Strategy; however, OSC is challenged with ensuring there is sufficient IT professionals and resources.

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? If your agency uses a multi-track system beyond simple, complex, and expedited to process requests, please describe the tracks you use and how they promote efficiency.

Yes, OSC utilizes a separate track for simple requests; we do not, however, use a multi-track system beyond simple, complex and expedited to process requests.

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 2018?

No.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2018 that were placed in your simple track.

Approximately 27.66%.

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 2016 and Fiscal Year 2017 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 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

Yes, the backlog decreased.

6. If not, did your agency process more requests during Fiscal Year 2018 than it did during Fiscal Year 2017?

Not applicable.

7. If your agency's request backlog increased during Fiscal Year 2018, 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 2018. If your agency has no request backlog, please answer with "N/A."

59.25%.

BACKLOGGED APPEALS

9. If your agency had a backlog of appeals at the close of Fiscal Year 2018, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2017?

Yes.

10. If not, did your agency process more appeals during Fiscal Year 2018 than it did during Fiscal Year 2017?

Not applicable.

11. If your agency's appeal backlog increased during Fiscal Year 2018, 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 2018. If your agency did not receive any appeals in Fiscal Year 2018 and/or has no appeal backlog, please answer with "N/A."

Not applicable.

C. Backlog Reduction Plans

13. In the 2018 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2017 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 2018?

Not applicable.

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2018, what is your agency's plan to reduce this backlog during Fiscal Year 2019?

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 2016 and Fiscal Year 2017 when completing this section of your Chief FOIA Officer Report.

OLDEST REQUESTS

15. In Fiscal Year 2018, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2017 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 2016 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

Not applicable.

17. 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 you provide any interim responses prior to the withdrawal?

Four (4) requests were closed out of the ten oldest because there was no up to date contact information for the requesters and/or they did not respond to still interested inquiries.

No interim responses were provided prior to closing these requests.

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

In order to reduce the FOIA backlog and streamline the process, OSC created the FOIA Backlog Reduction Flowchart, which entails separate teams for intake, initial reviews, and final reviews before a request is submitted to the Chief FOIA Officer for release determination and closure. Each team has separate responsibilities so that no one individual processes a request from start to finish. Furthermore, we have bi-weekly roundtable discussions on how to improve our processes.

Presently, our oldest FOIA request is from 2014. It is a voluminous request of over 8000 pages to review and it has many pages for referral. In the future, we will have advanced FOIA professionals review voluminous requests in order to reduce the overall age.

TEN OLDEST APPEALS

19. In Fiscal Year 2018, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

Yes.

20. 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 2017 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

Not applicable.

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

The Chief FOIA Officer worked closely with the Office of General Counsel to process backlogged appeal(s) with deadline date(s).

TEN OLDEST CONSULTATIONS

22. In Fiscal Year 2018, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2017 Annual FOIA Report?

Yes.

23. 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 2017 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

24. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2018.

OSC's present obstacles with closing its oldest requests, appeals, and consultations are the following: (1) voluminous records with over 5,000 pages to review, (2) voluminous records for consultations and/or referrals (including marking those pages in FOIA Xpress), (3) FOIA litigation, and (4) turnover with contractors.

25. 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.

26. 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 2018.

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 2018 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.

Prior to March 2018, some FOIA requests were processed from start to finish by the FOIA Officer, while others were processed by inexperienced FOIA professionals. In addition, FOIA professionals utilized a variety of processing tools and, when records were released, FOIA professionals were manually counting pages by hand.

In June 2018, OSC required that all FOIA professionals utilize one platform (FOIA Xpress) to process all FOIA requests. Each individual was required to attend mandatory training. In addition, a flowchart was created as a plan to reduce the FOIA backlog. This entailed creating an intake team, an initial review team, and final review team. Each team is required to process FOIA requests in accordance with DOJ's OIP FOIA Guidance(s). In order to rectify the problem of inconsistent communication, we host bi-weekly roundtable discussions to go over case law, research, and OIP's FOIA Toolkit to ensure we are processing according to FOIA regulations. At the end of our roundtable, our discussions are memorialized in writing and distributed to the team until we can create Standard Operating Procedures.

By streamlining, OSC's FOIA backlog decreased by 56.72%. In addition, we processed 55.52% more requests for FY 2018 than we did in FY 2017. Overall, it is proven that utilizing one FOIA platform to process requests by having teams that focus on separate tasks with deadline dates is efficient and effective.