

Section 1: FOIA Leadership and Applying the Presumption of Openness

A. Leadership Support for FOIA

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 of 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.

Barbara Wheeler Jones, Clerk (Supervisory Attorney Advisor)

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

OSC has not yet incorporated FOIA into its overall strategic plan.

B. Presumption of Openness

4. The Attorney General's 2022 FOIA Guidelines provides that "agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions." Does your agency provide such confirmation in its response letters?

Yes, OSC confirms in response letters to FOIA requesters that the foreseeable harm standard was considered when reviewing records and applying FOIA exemptions.

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interest protected by a FOIA exemption. This is commonly referred to as a Glomar response. With respect to these responses, please answer the below questions:

a) In addition to tracking the exerted exemption, does your agency specifically track whether a request involved a Glomar response?

No, OSC does not specifically track whether a request involved a Glomar response.

b) If yes, please provide:

i. The number of times your agency issued a full or partial Glomar response (separate full and partial if possible).

Not Applicable

- ii. **The number of times a Glomar response was issued by exemption (e.g., Exemption 7© - 20 times, Exemption 1-5 times).**

Not Applicable

- c) **If your agency does not track the use of Glomar responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.**

OSC's case management system does not have the ability to search for Glomar responses because that metric is not captured when closing a request. To track Glomar responses, OSC would have to develop a manual tracking process (i.e., excel spreadsheet).

6. **Optional –If there are any other initiatives taken by your agency to ensure that the presumption of openness is being applied, please describe them here.**

Section II: Ensuring Fair and Effective FOIA Administration

A. FOIA Training

1. **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 taken to ensure FOIA training is made available and used by agency personnel.**

Under the previous Clerk, OSC's FOIA staff were enrolled to receive automatic updates from Eventbrite for upcoming trainings provided by Office of Information Policy (OIP). Also, when FOIA staff complete training sessions, they debrief and share course information with the FOIA team at a scheduled team meeting.

2. **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 various FOIA/Privacy Act training for Fiscal Year (FY) 2022.

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

OSC's FOIA professionals attended/completed the following:

- Initial Review Training
- Virtual Processing from Start to Finish Workshop
- Virtual Privacy Considerations
- Virtual Unified Agenda Training
- Council of Agency PRA Officers

- Virtual Exemption 7 Workshop
- Best Practices Workshop on Technology in FOIA
- NARA Controlled Unclassified Information Training
- FOIA Tech Showcase Follow-up Workshop
- Virtual Continuing FOIA Education
- Virtual Annual FOIA Report Refresher and Quarterly Report Training
- Box.com in-house training
- Fundamentals of Marking Controlled Unclassified Information
- OSC Cybersecurity Training: Privacy and Data Protection
- Virtual Procedural Requirements and Fees Training
- Virtual FOIA Summit for Agency FOIA Professionals
- Virtual Litigation Workshop
- Virtual Exemption 1 and Exemption 7 Training
- Virtual Exemption 4 and Exemption 5 Training

4. 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 during this rating period.

5. 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

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

OSC advises non-FOIA professionals of their obligations under the FOIA during the onboarding process for new employees. This FOIA training is designed to help new employees understand how their records, including email and Teams chat, will be collected and processed in response to a FOIA request. OSC's FOIA team also conducted training that covered the search and retrieval process and provided training on the use of the FOIA online system.

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

B. Outreach

- 7. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, with the requester community or open government 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.**

OSC FOIA professionals have not engaged in any overarching outreach with the requestor community. However, OSC FOIA professionals routinely communicate with individual FOIA requestors to clarify and/or discuss the scope of requests, narrow the scope of overly broad requests, provide status updates and other information to ensure the highest levels of customer service.

- 8. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, any specific examples.**

Yes, OSC's FOIA professionals proactively contact requesters concerning complex or voluminous requests to clarify or narrow the scope. For example, OSC regularly receives requests for first-party investigative files (often on an expedited basis) which are often complex or voluminous. In these cases, OSC's FOIA professionals proactively contact requesters about modifying the scope of their request to accept records that are not duplicative or that were not submitted by the requester, which greatly reduces the processing time so requesters can receive responses faster.

- 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 2022 (please provide a total number or an estimate of the number).**

OSC's previous Chief FOIA Officer was the acting FOIA Public Liaison. Communications with requesters are maintained in a separate Microsoft Outlook folder. Requesters sought assistance 205 times during FY 2022.

C. Other Initiatives

- 10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.**

Yes. OSC leadership evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands. OSC plans to hire two (2) additional FOIA professionals to address anticipated FOIA demands.

- 11. How does your agency use data or processing metrics to ensure efficient management of your**

FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

OSC uses case management reports and staff processing statistics to ensure efficient management of FOIA workload. For example, FOIA's program specialist (Intake clerk) uses staff processing reports to assign and/or reassign cases among FOIA professionals as necessary.

12. Optional – If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

OSC's Chief FOIA Officer regularly reviews the status of pending FOIA requests to mitigate processing delays and to strategize ways to close backlogged FOIA requests.

Section III: Proactive Disclosures

The Attorney General's FOIA Guidelines emphasize that "proactive disclosure of information is ...fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post 'records online quickly and systematically in advance of any public request' and reiterate that agencies should post records "in the most useful, searchable, and open formants possible."

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

OSC's Clerk/Chief FOIA Officer has monthly ticklers to print reports from FOIA Xpress and post proactive disclosures. OSC's Clerk/Chief FOIA Officer also collaborates with division leaders to identify and proactively post records of public importance in OSC's electronic reading room.

2. 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. § 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 2022, OSC did not have any frequently requested records to be posted.

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, OSC has taken steps to make information posted to its website more useful to the public. OSC continually reviews website layout and design to make it more user-friendly.

4. If yes, provide examples of such improvements. In particular, please describe the 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 new designed website provides access to content and records in an open-machine-readable, and machine-actionable formats.

5. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

No.

6. Optional –Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

Not applicable.

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's FOIA Guidelines emphasize the importance of making FOIA websites easily navigable and complying with the FOIA.gov interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

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

Yes.

2. Please briefly describe any new types of technology your agency began using during the reporting period to respond to current and anticipated FOIA demands.

During this reporting period, OSC rolled out Box.com, which provides for the smooth and secure exchange of files, evidence, and artifacts to requesters and other agencies when documents are too voluminous to transmit via email.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

OSC does not currently use any technology to automate record processing.

4. 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?

Yes, OSC reviewed its website during the reporting period to ensure it addresses the elements noted in the guidance.

5. Do all four of your agency's quarterly reports for Fiscal Year 2022 appear on FOIA.gov?

Three (3) of OSC's quarterly reports for Fiscal Year 2022 appear on FOIA.gov.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2023.

Quarter 4 report was not posted by previous Chief FOIA Officer. The current Acting Chief FOIA Officer will develop a schedule to ensure accurate reporting and scheduling in Fiscal Year 2023.

7. 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 2021 Annual FOIA Report and, if available, for your agency's Fiscal Year 2022 Annual FOIA Report.

FY21 and FY222 raw data has not been posted.

8. In February 2019, DOJ and OMB issued joint Guidance establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

Yes, OSC is in compliance with the guidance establishing interoperability to receive requests from the National FOIA Portal on FOIA.gov.

9. Optional –Please describe the best practices used in greater utilizing technology, and any challenges your agency faces in this area.

Not Applicable

Section V: Steps Taken to Remove Barriers to Access, Improve Timeliness in Responding to Requests, and Reduce Backlogs

The Attorney General's FOIA Guidelines instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

A. Remove Barriers to Access

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

Yes, first-party requestors can request case records if the investigation of their complaint is still active.

2. 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 success.

OSC's Directive 53 permits first party requests to obtain records that are part of his/her case file if the investigation is still active. OSC provides records that are sent by the first-party requester and OSC letter correspondence.

B. Timeliness

3. For Fiscal Year 2022, 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 2022 Annual FOIA report.

Two (2) days

4. 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 2022 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

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

Yes.

6. If your agency uses a separate for simple requests, according to Annual Report Section VII.A., was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2022?

No.

7. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

Yes.

8. Please provide the percentage of requests processed by your agency in Fiscal Year 2022 that were placed in your simple track. Please use the following calculation base 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.

50%

9. 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

C. Backlogs

BACKLOGGED REQUESTS

10. If your agency had a backlog of requests at the close of Fiscal Year 2022, 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 2021?

Yes, the backlog decreased.

11. If not, according to Annual Report Section XII.D.1, did your agency process more requests during Fiscal Year 2022 than it did during Fiscal Year 2021?

Not Applicable

12. If your agency's request backlog increased during Fiscal Year 2022, 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 factor:

- 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

13. 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 2022. Please use the following calculation based on the 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."

.72%

BACKLOGGED APPEALS

14. If your agency had a backlog of appeals at the close of Fiscal Year 2022, 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 2021?

Not Applicable

15. If not, according to Section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2022 than it did during Fiscal Year 2021?

Not Applicable

16. If your agency's appeal backlog increased during Fiscal Year 2022, 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

17. 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 2022. Please use the following calculation based on the data from your Annual FOIA Report: (backlogged appeals 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 2022 and/or has no appeal backlog, please answer "N/A."

N/A

D. Backlog Reduction Plans

18. In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2021 were 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 2022?

Not Applicable

19. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2022, please explain your agency's plan to reduce this backlog during Fiscal Year 2023.

Not Applicable

E. Reducing the Age Requests, Appeals, and Consultations

TEN OLDEST REQUESTS

20. In Fiscal Year 2022, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2021 Annual FOIA Report?

Yes

21. 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 2021 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

Not Applicable

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

Not Applicable

TEN OLDEST APPEALS

23. In Fiscal Year 2022, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2021 Annual FOIA Report?

Yes.

24. 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 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Not Applicable

25. 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

26. In Fiscal Year 2022, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report?

Not Applicable

27. 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 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Not Applicable

Additional Information on Ten Oldest

28. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2023.

Not Applicable

F. Additional Information about FOIA Processing

29. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency's overall FOIA request processing and backlog. If possible, please indicate the number and nature of requests subject to litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.

Not Applicable

30. How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA? (This information is available in your agency's FY22 raw data).

Not Applicable