

U.S. Office of Special Counsel
2018 Chief FOIA Officer's Report

February 2018

In accordance with U.S. Department of Justice (DOJ) guidelines, the Chief FOIA Officer for the U.S. Office of Special Counsel (OSC) hereby submits the 2018 Chief FOIA Officer's Report. Ken Hendricks, Clerk of the U.S. Office of Special Counsel, is the Chief FOIA Officer.

Section I: Steps Taken to Apply the Presumption of Openness

A. FOIA TRAINING

1. *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.

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

Specific examples include DOJ's *Introduction to the Freedom of Information Act*; Graduate School USA's three-day seminar, *Freedom of Information and Privacy Acts*; and several substantive one-on-one and small-group OSC training sessions.

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

One-hundred percent of OSC's staff whose responsibilities include handling FOIA matters received substantive FOIA training during the reporting period.

4. *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.*

N/A.

B. Outreach

5. *Did your FOIA professionals engage in any outreach or dialogue with the requester community or open government groups regarding your administration of the FOIA?*

Yes, regarding specific pending FOIA requests or appeals from the relevant requesters. Staff also participated in the Annual FOIAXpress User Conference & Technology Summit. That conference included presentations by FOIA-community stakeholders, including a public interest group.

C. Other Initiatives

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

OSC's Information Technology Branch (ITB) conducts some electronic FOIA searches. We have conducted one-on-one and small group discussions with the FOIA unit and ITB regarding FOIA search obligations.

7. *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's FOIA staff continues to coordinate with non-FOIA staff in order to identify records appropriate for discretionary release.

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

1. *For Fiscal Year 2017, what was the average number of days your agency reported for adjudicating requests for expedited processing?*

31.23 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 days or less.*

OSC's intake process was affected by the departures of two experienced FOIA staff members last year. These staff members performed most of the substantive intake processes. We recently backfilled one of these vacancies. We will conduct intake training for relevant FOIA staff.

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.*

Yes. The review involved data and workflow analysis, and interviews.

- 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 Fiscal Year 2017 (please provide a total number or an estimate of the number).*

Approximately 20.

- 5. Optional Survey Question: If possible, please provide an estimate of the average number of pages that your agency processes for each request.*

N/A

- 6. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as improving search processes, eliminating redundancy, etc., please describe them here.*

OSC's Information Technology Branch (ITB) conducts some electronic FOIA searches. In the past, the FOIA unit would send necessary search information to ITB via email message. The FOIA unit and ITB worked together to create an e-search request form that conveys the required search parameters in a clear and standard format. This form also serves as an integral part of the administrative record in the relevant request files.

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.*

When OSC completes its statutory activity regarding review of whistleblower disclosure matters, it posts certain related information in the agency public file. In some instances, OSC posts additional information in the public file when it determines that posting additional information is both necessary and appropriate. OSC posted such information in the public file this reporting period. OSC's public file is available at <https://osc.gov/Pages/Resources-PublicFiles.aspx>.

When OSC completes its statutory investigative activity regarding allegations of prohibited personnel practices, it may post certain report information when both necessary and appropriate. OSC posted such reports, in redacted form, this reporting period. OSC's posted prohibited personnel practice reports are available at <https://osc.gov/Pages/PPP-Resources.aspx>.

- 2. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness?*

Yes, via Twitter and press releases.

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?*

The posted material is already in its most useful format.

4. *If yes, please provide examples?*

N/A – see 3, above.

5. *If there are any other steps your agency has taken to improve proactive disclosures, please describe them here. For example, has your agency engaged requesters in determining how and what to post? Has your agency used web analytics to inform your proactive disclosures?*

N/A.

Section IV: Steps Taken to Greater Utilize Technology

1. *Has your agency identified any best practices to leverage technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents? If yes, please describe the best practices, the types of technology used and the impact in your agency's processing.*

Yes. OSC recently implemented de-duplication software. Implementation was too recent to assess the impact, but we expect the software to decrease the amount of time otherwise spent on manual de-duplication.

2. *Did your agency successfully post all quarterly reports for Fiscal Year 2017?*

Yes.

3. *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 2018.*

N/A.

4. *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 2016 Annual FOIA Report and, if available, for your agency's Fiscal Year 2017 Annual FOIA Report.*

Fiscal Year 2016: Link pending.

Fiscal Year 2017: Link pending.

5. *If there are any other steps your agency has taken to improve use of technology in FOIA, please describe them here.*

OSC is in the process of developing a new case management system. If implemented, we expect faster and increased search capabilities for primary FOIA staff.

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

A. SIMPLE TRACK

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

Yes.

2. *If so, for your agency overall in Fiscal Year 2017, was the average number of days to process simple requests twenty working days or fewer?*

No.

3. *Please provide the percentage of requests processed by your agency in Fiscal Year 2017 that were placed in your simple track.*

28 %.

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?*

N/A.

B. BACKLOGS

BACKLOGGED REQUESTS

5. *If your agency had a backlog of requests at the close of Fiscal Year 2017, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2016?*

No, it increased by approximately 28 requests.

6. *If not, 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*

The backlog increase is attributable to several of the above-noted factors. We received approximately 35 more requests in Fiscal Year 2017 than we did in Fiscal Year 2016. In 2017, OSC placed a greater focus on the oldest and most complex pending requests. And, two experienced FOIA employees departed or were transitioning out of OSC during Fiscal Year 2017. We could not backfill either vacancy until January 2018, when we backfilled one of them. In addition, several urgent litigation and non-FOIA demands required the attention of staff and management members who also handle regular FOIA duties.

7. *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 2017.*

114 %.

BACKLOGGED APPEALS

8. *If your agency had a backlog of appeals at the close of Fiscal Year 2017, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2016?*

Yes.

9. *If not, explain any 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 (appeals) received. If possible, please provide examples or briefly describe the types of complex requests (appeals) contributing to your backlog increase.*
- *Any other reasons – please briefly describe or provide examples when possible*

N/A.

10. *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 2017. If your agency did not receive any appeals in Fiscal Year 2016 and/or has no appeal backlog, please answer with "N/A".*

8%.

C. Backlog Reduction Plans

11. *In the 2017 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2016 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 2017?*

N/A.

12. *If your agency had a backlog of more than 1,000 requests in Fiscal Year 2017, what is your agency's plan to reduce this backlog during Fiscal Year 2018?*

N/A.

D. STATUS OF TEN OLDEST REQUESTS, APPEALS, AND CONSULTATIONS

TEN OLDEST REQUESTS

13. *In Fiscal Year 2017, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2016 Annual FOIA Report?*

No.

14. *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 less than ten total oldest requests to close, please indicate that.*

OSC closed nine of the ten oldest requests.

15. *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?*

Two requests were withdrawn prior to interim responses.

TEN OLDEST APPEALS

16. *In Fiscal Year 2017, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2016 Annual FOIA Report?*

OSC had four pending appeals at the end of FY 2016, and we closed all four of them.

17. *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 2016 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.*

OSC had four pending appeals at the end of FY 2016, and we closed all four of them.

TEN OLDEST CONSULTATIONS

18. *In Fiscal Year 2017, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2016 Annual FOIA Report?*

OSC had five pending consultations at the end of FY 2016, and we closed four of them.

19. *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 2016 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.*

OSC had five pending consultations at the end of FY 2016, and we closed four of them.

E. ADDITIONAL INFORMATION ON TEN OLDEST REQUESTS, APPEALS, AND CONSULTATIONS & PLANS

20. *Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals and consultations from Fiscal Year 2017.*

Two experienced full-time FOIA employees departed or began transitioning out of OSC last year. We could not backfill either vacancy until January 2018, when we backfilled one of them. In addition, several urgent litigation and non-FOIA demands required the attention of management and staff members who also handle regular FOIA duties.

21. *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.*

N/A.

22. *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 2017.*

This fiscal year, OSC will continue placing a greater focus on the oldest requests, appeals, and consultations.

F. Success Stories

Out of all the activities undertaken by your agency since March 2017 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.

- OSC placed a greater focus on the oldest and most complex pending requests, and provided assignees the time to process these complex matters.
- This approach reduced the age of our appeals backlog from 2005 to 2017, eliminated all of our Fiscal Year 2011-pending requests, and reduced to two the number of Fiscal Year 2012-pending requests.