

U.S. Office of Special Counsel
2014 Chief FOIA Officer Report

In accordance with Department of Justice guidelines, the Chief FOIA Officer for the U.S. Office of Special Counsel (OSC) hereby submits the 2014 Chief FOIA Officer Report. After review by the Office of Information Policy at the Department of Justice, this report will be posted to OSC's website. OSC General Counsel Lisa Terry is the Chief FOIA Officer.

Section I: Steps Taken to Apply the Presumption of Openness

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

FOIA Training:

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

Yes.

2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.

As reported last year, OSC has one employee (the FOIA Officer) fully-dedicated to processing initial FOIA and Privacy Act requests. As part of his routine practice, the FOIA Officer continues to review FOIA guidance that is published by the U.S. Department of Justice (DOJ) Office of Information Policy (OIP). Other OSC employees who perform FOIA duties as part of their overall portfolios also review such guidance materials.

The FOIA Officer and the Associate General Counsel conducted relevant one-on-one training for one temporary Presidential Management Fellow and two summer interns who performed FOIA duties.

3. Did your FOIA professionals attend any FOIA training during the reporting period such as that provided by the Department of Justice?

On July 16-17, 2013, three staff members from OSC, Office of General Counsel, (the FOIA Officer, a temporary Presidential Management Fellow, and an employee who performs FOIA duties as part of his overall portfolio) attended an OIP training program entitled "FOIA for Attorneys & Access Professionals."

4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.

OSC has one employee (the FOIA Officer) fully-dedicated to processing initial FOIA and Privacy Act requests, and three additional employees who perform FOIA duties as part of their overall portfolios. When possible, OSC also relies on temporary assistance from intern and Presidential Management Fellow personnel. As discussed in items 2 and 3, above, OSC sent three employees to DOJ FOIA training, and provided one-on-one FOIA training to other employees.

5. OIP has issued guidance that every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year. Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.

OSC will continue the training approach discussed in items 2, 3, and 4, above. Staff members are currently scheduled to attend OIP training being held in May and July 2014.

Outreach:

6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.

No.

Discretionary Disclosures:

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

7. Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.

As reported last year, OSC continues its practice of reviewing records for discretionary release as part of the standard FOIA review practice. Given the nature of OSC's mission and the fact that a large majority of requests involve case files which include investigative material and privacy-protected information, the opportunity for discretionary disclosures is very limited. If the FOIA Officer identifies information that can be considered for discretionary release, he discusses the potential for release with the

appropriate program staff. The review of FOIA appeals includes a similar process conducted by the appeal official.

8. During the reporting period did your agency make any discretionary releases of otherwise exempt information?

Yes.

9. What exemptions would have covered the information that was released as a matter of discretion?

FOIA Exemption 5.

10. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

While processing a FOIA request, OSC identified and released in part two pages of e-mails that contained material that could have been withheld as deliberative. While processing two other FOIA requests, OSC was able to provide statistical information that we were not obligated to research and generate. While processing a FOIA appeal, OSC reviewed and released in part several interview summaries and an internal recommendation that is deliberative and also could have been withheld pursuant to the attorney work product doctrine.

11. If your agency was not able to make any discretionary releases of information, please explain why.

Not Applicable.

Other Initiatives:

12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.

No. With the press of processing duties, OSC's FOIA Officer could not complete the quarterly reports. Due to system tracking limitations, OSC's FOIA staff resorted to tracking new and closed requests manually. With the implementation of its new automated tracking system, OSC will work towards more efficient production of the quarterly reports.

13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.

See the responses discussed in this section, above.

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

Describe here the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

Personnel:

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?

No.

2. If not, what proportion of personnel has been converted to the new job series?

OSC has one employee fully-dedicated to FOIA and Privacy Act processing. That individual qualifies for a higher job series than that of Government Information Specialist.

3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?

As noted above, OSC has one position fully-dedicated to FOIA and Privacy Act processing. OSC will revisit the issue if circumstances warrant. OSC also has a small number of positions that include FOIA duties as part of their overall duties. Because their FOIA duties amount to only a portion of their overall OSC duties, conversion of these positions to the Government Information Specialist job series would not be appropriate.

Processing Procedures:

4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

No. OSC plans to achieve greater efficiency through implementation of a new automated FOIA processing system. For example OSC's ability to adjudicate such requests within ten calendar days will improve with the help of automated reminders sent by the new

tracking system to FOIA staff on a timely basis. Additionally, the new system will facilitate OSC's issuance of adjudication letters through an automated correspondence function after a decision is made.

5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.

No, but the OSC conducts appropriate coordination with other agencies when referral or coordination activity is necessary.

Requester Services:

6. Do you use e-mail or other electronic means to communicate with requesters when feasible?

Yes.

7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?

Yes.

8. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc.

OSC had a FOIA tracking system that did not provide adequate case tracking and management capabilities. OSC obtained a new automated FOIA processing system. We hope the new system will increase processing efficiency and decrease the time spent performing FOIA reporting functions.

Section III: Steps Taken to Increase Proactive Disclosures

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2013 to March 2014). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

Posting Material:

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?

Yes.

2. If so, describe the system that is in place.

While processing requests, the FOIA Officer also considers whether records are appropriate for discussion concerning general proactive disclosure. In addition, OSC leadership periodically considers whether agency material is appropriate for proactive disclosure.

3. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.

Report regarding allegations that a former Special Counsel committed prohibited personnel practices against OSC employees, available at http://www.osc.gov/documents/Prohibited%20Personnel%20Practices/OPM%20IG_OSC%20Report%20Transmittal%20Letter%20to%20OSC.pdf.

Useful information about OSC activities has been included in numerous OSC news release items available at <http://www.osc.gov/>.

Making Posted Material More Useful:

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, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?

Yes.

5. If so, provide examples of such improvements.

Publicly posted materials are indexed on the OSC website.

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?

Yes, Twitter.

7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.

OSC's case file records contain information that could have a substantial impact on individuals' personal privacy. For this reason, OSC must take the time to carefully apply the appropriate personal privacy protections whenever any disclosure is contemplated.

8. Describe any other steps taken to increase proactive disclosures at your agency.

See the responses to items 1 through 6, above.

Section IV: Steps Taken to Greater Utilize Technology

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

Online tracking of FOIA requests:

1. Can a FOIA requester track the status of his/her request electronically?

Not at this time, but OSC is in the process of implementing this capability as part its new automated FOIA processing system. We anticipate that requesters will have this capability in Fiscal Year 2014.

2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?

OSC's new tracking function will be accomplished through an on-line portal.

3. Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

See the response to item 1, above.

4. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request?

See the response to item 1, above.

5. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? If not, please explain why.

See the response to item 1, above.

Use of technology to facilitate processing of requests:

6. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced 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?

Yes.

7. If so, describe the technological improvements being made.

OSC recently obtained, and is in the process of implementing, a new automated FOIA processing system that will improve receipt, tracking, redacting, correspondence, management, and reporting functions.

8. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?

Yes, de-duplication technology.

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

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.*

Simple Track Requests:

1. 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.

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

Yes.

- b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?

No.

- c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?

Not Applicable.

Backlogs and "Ten Oldest" Requests, Appeals and Consultations:

2. 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. 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 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

Backlogs

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?

No. OSC completed 129 requests in Fiscal Year 2013 compared to 76 in Fiscal Year 2012. Despite the significant increase in closures, the request backlog increased by 25 requests due, in part, to the volume of new requests.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

No, it increased by 4 appeals.

Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?

No.

- d. 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 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven "oldest" requests.

OSC closed 6 of the 10 oldest requests.

Ten Oldest Appeals

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?

No.

- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report.

OSC closed 2 of the 10 oldest appeals.

Ten Oldest Consultations

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?

OSC did not have any consultations pending at the end of Fiscal year 2012.

- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.

Not Applicable.

Reasons for Any Backlogs:

3. If you answered "no" to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:

Request and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?

Yes, in part. The number of requests received increased from 135 in Fiscal Year 2012 to 149 in Fiscal Year 2013.

- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?

Yes, in part.

- c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received?

Yes, in part. Our work on complex matters (whether oldest matters, pending matters, or new requests) affected the closure rate.

- d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?

OSC had a FOIA tracking system that did not provide adequate case tracking and management capabilities. OSC obtained a new automated FOIA processing system that we anticipate will increase processing and management capabilities and decrease the time spent performing FOIA reporting functions.

“Ten oldest” Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.

See the response to item c, above.

- f. If your agency was unable to close any of its ten oldest requests or appeals 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.

Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014.

At the end of Fiscal Year 2013, OSC had a backlog of 122 requests and 12 appeals. As noted above, OSC obtained a new FOIA processing system that we anticipate will provide efficiency in FOIA reporting, processing, and management functions. OSC plans to continue implementing the new system during 2014.

OSC lacks the resources to devote additional staff to the FOIA unit in an attempt to reduce backlogs.

5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency's plan for achieving backlog reduction in the year ahead.

Not Applicable.

Interim Responses:

OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.

6. Does your agency have a system in place to provide interim responses to requesters when appropriate?

Yes.

7. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

OSC issued 18 interim responses among approximately 11 backlogged requests in Fiscal Year 2013.

Use of FOIA's Law Enforcement "Exclusions"

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2013?

No.

2. If so, what was the total number of times exclusions were invoked?

Not Applicable.

Spotlight on Success

Out of all the activities undertaken by your agency since March 2013 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, 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 a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

Despite a very tight budget, OSC purchased an automated FOIA processing system at the close of Fiscal Year 2013. The implementation of the new FOIA system in 2014 will enable OSC to more efficiently and effectively receive and track requests, redact records, create correspondence, and manage the FOIA workflow.